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Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 45–48 OF 1998 AND 45–49 OF 1998
AUGUSTINE PAUL J
B 14 APRIL 1999

Criminal Law *— Emergency (Essential Powers) Ordinance — s 2(1) — Corrupt practice by Member of administration — Accused directed Special Branch officers to obtain retractions of allegations of sexual misconduct against himself — Ingredients to be proven by prosecution — Emergency (Essential Powers) Ordinance No 22 of 1970 s 2(1)*

C

Criminal Procedure *— Charge — Duplicity of — What does not amount to — Whether two or more acts constituted the same transaction — Criminal Procedure Code (FMS Cap 6) s 165(1)*

D ***Criminal Procedure*** *— Defence — Principles governing — Nature of the defence, how ascertained — Whether accused must put case to prosecution witnesses in cross-examination*

Criminal Procedure *— Police investigation — Police report — Whether person who makes police report may himself be charged as result of investigation conducted by police on the report — Whether police report a condition precedent for commencement of criminal*
E *prosecution — Criminal Procedure Code (FMS Cap 6) s 107(1)*

Criminal Procedure *— Sentence — Mitigation — Accused reading prepared statement on political conspiracy and attacks on judiciary — Counsel for accused refusing to mitigate despite invitation by court to do so — Whether refusal indicative of accused's absence of remorse and unwillingness to make a plea in mitigation*

F ***Criminal Procedure*** *— Sentence — Corruption — Corrupt practice by Member of the administration — Matters to be considered when imposing sentence — Whether custodial sentence appropriate — Whether sentence to take effect from the date on which it is passed — Discretion of court to back-date sentence, how exercised — Criminal Procedure Code (FMS Cap 6) s 282(d)*

G ***Criminal Procedure*** *— Sentence — Stay of execution pending appeal — Application for, factors to be considered*

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H *— Whether prosecution had established prima facie case — Whether court should undertake a maximum evaluation of credibility of witnesses at the close of the prosecution case — Whether prosecution to prove its case beyond reasonable doubt at the close of its case — Criminal Procedure Code (FMS Cap 6) s 180*

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Evidence *— Hearsay — Statement made by person not called — Fact that statement made, whether admissible on its own as evidence — Whether statement relevant to a fact in issue*

D

Evidence *— Hearsay — Out of court statements by accused person — Whether amount to admissions — Whether exception to hearsay rule and therefore admissible — Whether substantive evidence of fact admitted — Evidence Act 1950 s 18*

Evidence *— Media publicity — Effect on evidence — Whether weakening value of evidence* E

Evidence *— Privilege — Legal professional privilege — Nature of privilege — Solicitor-client communications, extent of — Failure of client to claim privilege during cross-examination — Whether amounts to express consent to solicitor to disclose privileged communications — Solicitors assisting each other in affairs of respective clients — Whether privilege would apply — Evidence Act 1950 ss 126 & 127* F

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Evidence *— Statement under s 112 of the Criminal Procedure Code — Uses of — Whether used for consistency or corroboration under s 157 of the Evidence Act 1950* G

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Evidence *— Witness — Credibility — Witness unshaken in cross-examination — Whether sufficient test — Discrepancies in evidence, effect of — Whether evidence could be accepted in absence of contradiction and inherent improbability*

Evidence *— Witness — Cross-examination of defence witness — Cross-examination as to previous statements in writing — Whether previous police statement may be shown to witness for purposes of contradicting him — Evidence Act 1950 s 145(1)* I

A ***Evidence*** *— Witness — Statement by — Witness given his own written statement by investigation officer — Propriety of — Whether police statement can be shown to witness before he gives evidence — Evidence of witness who gives evidence after seeing his police statement, effect of*

The accused — the former Deputy Prime Minister — was charged
B with five counts of sodomy under s 377B of the Penal Code and five counts of corrupt practices under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('the Ordinance'). Four of the charges under the Ordinance were amended and tried together under s 165 of the Criminal Procedure Code (FMS Cap 6)('the CPC'). These charges claimed that the accused, while being a Member of the
C administration, had committed corrupt practice by directing the Special Branch Director Dato Mohd Said bin Awang ('Dato Mohd Said') and Special Branch Deputy Director II Dato Amir bin Junus ('Dato Amir Junus') to obtain written statements — from one Azizan bin Abu Bakar ('Azizan') and one Ummi Hafilda bte Ali ('Ummi') — to deny allegations of sodomy made against the accused, which the
D Special Branch had so obtained, for the accused's advantage. After the amendments, the court ruled that the truth or falsity of the allegations referred to in the charges was not relevant and expunged from the record all evidence relating to such matters. An issue that arose in consequence was whether the court was empowered to do this.

E At the close of the case for the prosecution, the defence raised, inter alia, the following issues: (i) that the standard of proof on the prosecution at the close of its case was beyond reasonable doubt and that the phrase 'prima facie' in s 180 of the CPC meant 'beyond reasonable doubt'; (ii) that only two charges should have been preferred against the accused; (iii) that no police report had been
F lodged against the accused in respect of any abuse of power or corruption and that there could not be an investigation into an alleged crime without a complaint; (iv) that the court should consider the cautioned statement of the accused which was exculpatory in nature; (v) that the accused was charged before the investigation was
G complete and this was wrong in law; (vi) that the statement of a prosecution witness (ACP Mazlan) under s 112 of the CPC should not have been shown to him as it violated s 159 of the Evidence Act 1950 ('the Act'); (vii) that an adverse inference should be drawn against the prosecution for its failure to call as witnesses the Prime Minister, the Attorney General, Tun Daim Zainuddin, Dato Seri
H Megat Junid, the Inspector General of Police ('the IGP'), Dato Ismail Che Ros, Dato Aziz Shamsuddin, ASP Zull Aznam ('ASP Zull Aznam'), Mohd Azmin bin Ali ('Azmin') and Shamsidar bte Taharin ('Shamsidar'); (viii) that the extensive reporting of the evidence of witnesses in the media weakened the value of the evidence adduced; (ix) that Dato Mohd Said, Dato Amir Junus, ACP Mazlan ('ACP
I Mazlan'), DSP Abdul Aziz ('DSP Aziz') and SAC Musa ('SAC Musa'), all prosecution witnesses, were accomplices; (x) that the evidence of certain prosecution witnesses, namely Dato Mohd Said,

Dato Amir Junus, ACP Mazlan, DSP Aziz, SAC Musa, Azizan and Ummi were not credible; and (xi) that the prosecution had not made out a prima facie case against the charges preferred against him.

The accused raised a number of grounds in his defence and called a total of 22 witnesses to testify on his behalf. The accused alleged, inter alia, that certain prominent politicians had conspired to topple him and, in order to achieve that objective, had enlisted the assistance of Ummi to make the allegations in return for benefits. The defence further: (i) attempted to adduce evidence to discredit Ummi when examining Azmin as a defence witness; (ii) applied to play four tapes which contained a recording of a conversation between Ummi and one Datuk Sng Chee Hua in London — the former was said to have admitted that she was involved in the publication of Buku 50 Dalih where the allegations against the accused was repeated; (iii) argued that an answer to a question asked of a defence witness to which the prosecution objected on the ground that the answer given would amount to hearsay, was admissible to show that the answer to the question was made and not as proof of its truth; (iv) proposed to adduce evidence of requests by police to persons to fabricate evidence against the accused and extraction of confessions from persons saying that they had been sodomized by the accused in support of the defence of police conspiracy; (v) argued that the evidence of the proposed witnesses was direct evidence of fabrication of evidence against the accused by the police. This caused the court to consider whether it had the power to require a party to disclose the relevancy of the evidence of a proposed witness before the witness gave evidence; and (vi) called two advocates and solicitors as witnesses whose proposed evidence related to communications they had with clients, thus forcing the determination of the issue whether these communications were privileged under s 126 of the Act.

At the close of case for the defence, a number of issues had to be determined by the court, namely: (i) whether press statements tendered as evidence by the defence could be taken in proof of the truth of their contents in the absence of the makers of the statements being called as witnesses; (ii) whether the police statements of certain prosecution witnesses under s 112 of the CPC ought to have been adduced in evidence by the prosecution under s 157 of the Act; (iii) whether the out of court statements of an accused person amounted to hearsay; (iv) whether a witness's police statement could be shown to him in the course of his cross-examination; (v) what are the principles governing the conduct of a defence; (vi) whether the defence had raised any reasonable doubt as to the truth of the prosecution case or as to the accused's guilt; (vii) the appropriate sentence to be imposed; (viii) whether the sentence should commence from the date on which it was passed; and (ix) whether this a proper case to allow a stay of execution pending appeal.

Held, convicting the accused as charged, and sentencing him to six

years imprisonment in respect of each of the four charges, the sentences to run concurrently from the date of conviction:

(1) The charges as amended referred to only allegations made by Ummi and Azizan. What required proof was only the fact that the allegations in question were made. The truth or falsity of the allegations was not a fact in issue and therefore no evidence could be led to establish that the allegations were true or false. Moreover, the retention of the evidence adduced by the parties to show the truth of the allegations was prejudicial to the accused (see p 32C–I). In such cases, the High Court has inherent power to expunge or order the expunction of irrelevant matters (see p 33C–D).

(2) A case cannot be said to have been proved beyond reasonable doubt at the close of the case for the prosecution when the defence is called as all the evidence would not be before the court then. A prima facie case as prescribed by the new s 180 of the CPC means a case which if unrebutted would warrant a conviction (see p 64B).

(3) No reasons were advanced in support of the defence's argument that only two charges should have been preferred against the accused. In any event, it could not be disputed that there was proximity of time, unity or proximity of place, continuity of action and community of purpose in respect of the charges. Each of the acts referred to in the four charges formed a separate offence in respect of which separate charges could lawfully be preferred as was done (see pp 64D–I and 65B).

(4) As the object of s 107 of CPC is merely to activate the investigative function of the police, it does not mean that a person who makes a report cannot himself be charged if the investigation reveals an offence committed by him. On the facts, the investigation and prosecution of the accused based on exhs P16 and/or P56 (both were police reports made on behalf of the accused) was valid in law notwithstanding the absence of a police report against him (see p 66A–G).

(5) The cautioned statement made by the accused, which is wholly exculpatory, should not be made the foundation of an order of acquittal at the close of the case for the prosecution, since at that stage the accused not having given evidence himself, his explanation could not be tested by cross-examination (see p 67G).

(6) It would be wrong to commence a prosecution without any investigation at all on the material ingredients to be proved. Where such investigation has been carried out, it is not illegal for the police to carry out further investigations to suit the exigencies of a case as it unfolds itself once the trial has commenced. On the facts, it could not be said that the investigation was incomplete when the accused was charged. In

any event, the court is not concerned with when and how evidence was obtained but only with its admissibility (see p 68B–D). A

(7) A police statement can be shown to a witness before he gives evidence and there is no legal prohibition against this (see p 69F); *Moomin bin Seman v PP* [1993] 3 MLJ 282 not followed. Section 159 of the Act does not apply as its operation is confined to contemporaneous statements, which was not the case here. In any event, s 159 is restricted in its operation to the refreshing of memory while under examination. Further, the witness ('ACP Mazlan') was not cross-examined beyond asking him whether he had seen his statement. The cross-examination ought to have proceeded further in order to enable the court to determine whether the defence had been prejudiced by the witness having seen the statement (see p 69F–H). B C

(8) The failure by the prosecution to call the Prime Minister, the Attorney General, the IGP and Dato Ismail Che Ros was not fatal to its case as their evidence was not necessary to unfold the narrative upon which the prosecution case was based. With regard to Tun Daim Zainuddin, Dato Seri Megat Junid, Dato Aziz Shamsuddin, ASP Zull Aznam, Azmin and Shamsidar, the available evidence showed that their role in the case was minimal and they were not material prosecution witnesses. Accordingly, the failure by the prosecution to call them as witnesses was not fatal. In any event, all the witnesses referred to by the defence were made available to the defence and it may exercised its right to call all of them, except for the Attorney General. This precluded the application of the presumption of adverse inference in s 114(g) of the Act in view of the fact that the prosecution evidence did not fall short of proving a prima facie case without them (see p 75A). D E F

(9) The objection of the defence on the media publicity weakening the value of evidence has some substance. It is equivalent to a person being present in court while evidence is being given and who is later called as a witness. Local cases have taken the view that the fact that a witness remains in court during the progress of a trial is no ground for refusing to allow him to give evidence, although it may reduce the weight to be attached to such evidence as may be given (see p 75D). G H

(10) Without the participation of Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz, the accused could not have committed the offences. As they had actively participated in the offences committed by the accused, they were accomplices. However, it was clear that the police officers were not willing participants in the offences but victims of them, acting under a form of pressure which would have required some firmness to resist. In the circumstances, reliance could be placed on their I

A uncorroborated evidence subject to the evidence being found to be credible. With regard to SAC Musa, he did not possess the mens rea in the commission of the offences by the accused and therefore he was not an accomplice (see p 78D–E).

(11) Being unshaken in cross-examination is not per se an all-
B sufficient test of credibility. The inherent probability or improbability of a fact in issue must be the prime consideration. In considering discrepancies and contradictions in a case, what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy. In the absence of any
C contradiction and in the absence of any element of inherent improbability, the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted. On the facts, the court having scrutinized the evidence of Dato Mohd Said, Dato Amir Junus, ACP Mazlan, DSP Aziz, SAC Musa, Azizan and Ummi, found that
D the evidence of the witnesses was consistent with each other and with the rest of the prosecution evidence and was credible (see p 79C–H).

(12) In order to prove the charges under s 2(1) of the Ordinance, the prosecution has to establish that the accused was a member of
E the administration at the material time and that while being such member he committed a corrupt practice. On the first limb, the prosecution had adduced prima facie evidence to show that the accused was the Deputy Prime Minister and the Minister of Finance at the material time and thus a member of the administration within the meaning of s 2(2) of the
F Ordinance. Corrupt practice under the second limb does not require that the act done must be in relation to the discharge of duties of the officer concerned. The test is whether the act done would have been done or could have been effectively done if the person in question were not the kind of member that he in fact was. On the facts, the prosecution had made out a prima facie
G case to show that the accused, whilst being the Deputy Prime Minister and Minister of Finance, had in such capacity committed corrupt practices in respect of the four charges preferred against him within the meaning of s 2(1) of the Ordinance (see pp 111A–C and 143D).

H (13) When a witness has been asked in cross-examination a question which is directly relevant to the matter in issue, and he gives a denial or a certain reply, he may be contradicted by independent evidence on all matters directly relevant to the issue. But where the question relates to a fact which is collateral to the issue, that is to say, where it is asked merely for
I discrediting a witness and the witness gives an answer, he cannot be contradicted. On the facts, the truth or falsity of the allegations made by Ummi were not relevant. What was

relevant was the fact that she had made the allegations. The answers she gave in reply to the questions in issue had to be taken as final and could not be contradicted (see pp 164G–165A). A

(14) The taped conversation was not relevant to the facts in issue with regard to the making of the allegations by Ummi. Furthermore, the evidence indicated that the tapes had been tampered with on the instructions of the accused. Since there is no evidence to show that the taped conversation was an accurate account of a conversation that occurred, then it was not admissible (see p 167D–F); *Mohd Ali Jaafar v PP* [1998] 4 MLJ 210 followed. B C

(15) A statement made to a witness by a person who is not himself called as a witness must be shown to be relevant to a fact in issue. If the purpose to admit such statement is not shown, the court would be in no position to rule on the relevancy of the statement with regard to the facts in issue and, if not relevant at all, the statement would amount to hearsay and thereby become inadmissible. In the present case, counsel failed to show the relevancy of the proposed answer and therefore the objection of hearsay taken by the prosecution was allowed (see pp 168G–I and 169F). D E

(16) Under s 136(1) of the Act, the court has the power and is duty bound to inquire into the relevancy of a proposed witness before he gives evidence. In the present case, no evidence had been adduced by the defence to show that there was any fabrication of evidence by the police. The proposed evidence of defence related to collateral facts and such evidence is generally not admissible. However, the proposed evidence could be admissible under ss 11 and 15 of the Act if there was compliance with the requirements of the sections. On the facts, the proposed evidence could not be admitted in evidence under s 11 as the proposed evidence was unconnected, even though cognate, with the evidence in the present case. The proposed evidence was also not admissible as evidence of similar facts as the facts of the case had no nexus with the proposed evidence in point of method and circumstance (see pp 174I–175A and 177D). F G

(17) Failure of the client to claim privilege when under cross-examination does not amount to express consent given by him to his legal adviser to disclose a communication which is otherwise privileged. In this case, the solicitors who had assisted each other with mutual offers of further assistance in the affairs of their respective clients would be agents to each other. In such a situation s 127 of the Act would govern the situation. On the facts, the proposed evidence of the two advocates and solicitors were privileged (see pp 180G and 181C–F). H I

(18) The presumption of genuineness of newspapers contained in s 81 of the Act is rebuttable pursuant to s 4(2). A statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. On the facts, the defence had called the reporters who had confirmed that the respective press statements were their stories and testified that no attempts were made by the persons who made the speeches to have them corrected. Thus, the newspaper reports tendered by the defence were admissible in evidence to establish the truth of their contents (see p 183G–I).

(19) The prosecution may, if it so desires, waive the privilege attached to a police statement recorded under s 112 of the CPC and use it for the purpose of s 157 of the Act. A failure to use such statement, however, can never be fatal to the prosecution case as it would only be the prosecution which would suffer as a result of not using a prior consistent statement to bolster the credit of a witness which has been challenged. Further, as a police statement is privileged, no adverse inference can be drawn from its non-production (see p 186G–H).

(20) The out of court statements of an accused person amount to hearsay. The admissibility of such statements is governed by ss 17, 18 and 21 of the Act which deal with admissions. Section 18(1) provides that statements made by a party to the proceedings are admissions and an accused is a 'party to the proceeding'. Therefore, a party's own statements are in all cases admissible against him. An admission is treated as an exception to the hearsay rule and is substantive evidence of the fact admitted (see pp 187I–188F).

(21) The police statement was shown to the witness ('MaAmin') with the full consent and knowledge of, and, with participation by the defence. There was nothing wrong with the prosecution showing the statement to the witness. The prosecution in doing so was proceeding in accordance with the second part of s 145(1) of the Act . The words 'which are to be used for the purpose of contradicting him' mean that, before the process of contradiction takes place, the statement may be shown to the witness (see p 192C–G).

(22) If the accused intends to suggest that a prosecution witness is not speaking the truth on a particular point, the witness's attention must be directed to that fact in cross-examination. The nature of the defence is to be ascertained not only from the evidence of the accused himself but also from the trend of the cross-examination of the prosecution witnesses and from the arguments of the accused's counsel at the close of the trial. It is important for the accused to put his essential and material case

to the prosecution witnesses in cross-examination (see pp 193A–194A). A

(23) On the facts, having considered the whole of the evidence adduced, the court was satisfied that in view of the numerous contradictions and inconsistencies in the defence evidence, not only in that of the accused himself but also in that of his own witnesses, the defence was unworthy of any credence. The defence had also failed to raise any reasonable doubt as to the truth of the prosecution case or as to the accused's guilt. The prosecution had proved its case against the accused beyond reasonable doubt on all four charges and the accused was guilty as charged (see p 229E). B C

(24) The accused's statement to the court on sentence centred on allegations of political conspiracy and attacks on the judiciary and was not a proper plea in mitigation. This indicated that there was not only an absence of remorse on the part of the accused but also an unwillingness to make a plea in mitigation (see pp 229G–230C). D

(25) Any sentence passed for an offence under s 2(1) of the Ordinance must also take into account the position occupied by the politician or public officer concerned and the nature of the abuse of office. On the facts, the accused was the second highest ranking official in the country at the material time. The manner in which he abused his office also hit at the very core of the administration of justice and its seriousness could not be underestimated. In the circumstances, an appropriate custodial sentence should be imposed (see pp 230G–231C). E F

(26) A departure from the normal rule under s 282(d) of the CPC — that a sentence normally takes effect from the date on which it is passed — is at the discretion of the court. An application to that effect must be made by the accused when he is making his plea in mitigation. Where a person has been in remand prior to his conviction, such period may be taken into account in determining the sentence. It is desirable to back-date a sentence where the pre-trial custody exclusively refers to the offence for which sentence is being passed. On the facts, the accused was in remand in respect of offences other than the charges for which he had been found guilty. Thus, the commencement of the sentence from his date of arrest would not be appropriate and should instead commence from the date of conviction (see pp 232B–E and 233A–D). G H

(27) Taking into account factors such as the seriousness of the offences for which the accused had been found guilty of, the defence advanced which consisted of after-thoughts and the attempted use of tampered evidence, this was not a proper case for a stay of execution pending appeal (see p 233E). I

A **[Bahasa Malaysia summary**

Tertuduh — bekas Timbalan Perdana Menteri — telah dituduh dengan lima tuduhan meliwat di bawah s 377B Kanun Keseksaan dan lima tuduhan perbuatan rasuah di bawah s 2(1) Ordinan Darurat (Kuasa-Kuasa Perlu) No 22 tahun 1970 ('Ordinan tersebut'). Empat daripada tuduhan-tuduhan di bawah Ordinan tersebut telah dipinda dan dibicarakan bersama di bawah s 165 Kanun Acara Jenayah (NMB Bab 6) ('KAJ'). Tuduhan-tuduhan ini mendakwa bahawa tertuduh, ketika menjadi seorang Anggota pentadbiran, telah melakukan perbuatan rasuah dengan mengarahkan Pengarah Cawangan Khas Dato Mohd Said bin Awang ('Dato Mohd Said') dan Timbalan Pengarah II Cawangan Khas Dato Amir bin Junus ('Dato Amir Junus') untuk memperolehi pernyataan bertulis — daripada seorang bernama Azizan bin Abu Bakar ('Azizan') dan seorang bernama Ummi Hafilda bte Ali ('Ummi') — untuk menafikan pengataan-pengataan berkenaan dengan liwat yang dibuat terhadap tertuduh, yang mana Cawangan Khas telah memperolehi untuk manfaat tertuduh. Selepas pindaan-pindaan tersebut, mahkamah telah membuat perintah bahawa kebenaran atau kepalsuan pengataan-pengataan yang dirujuk dalam tuduhan-tuduhan tersebut adalah tidak relevan dan memadamkan daripada rekod kesemua keterangan yang berhubung dengan perkara tersebut. Satu isu yang timbul sebagai akibat, adalah sama ada mahkamah mempunyai kuasa untuk berbuat demikian.

Pada masa kes ditutup untuk pihak pendakwaan, pihak pembelaan telah menimbulkan, antara lainnya, isu-isu yang berikut: (i) bahawa darjah pembuktian atas pihak pendakwaan pada masa penutupan kesnya adalah melampaui keraguan yang munasabah dan frasa 'prima facie' dalam s 180 dalam KAJ mempunyai makna 'melampaui keraguan yang munasabah'; (ii) bahawa hanya dua tuduhan yang sepatutnya dibuat terhadap tertuduh; (iii) bahawa tiada laporan polis telah dikemukakan terhadap tertuduh berkenaan dengan sebarang penyalahgunaan kuasa atau rasuah dan bahawa tidak boleh terdapat satu penyiasatan ke dalam satu jenayah yang dikatakan tanpa satu aduan; (iv) bahawa mahkamah sepatutnya mempertimbangkan pernyataan beramaran tertuduh yang bersifat membebaskan tertuduh daripada tuduhan; (v) bahawa tertuduh telah dituduh sebelum penyiasatan selesai dan ini adalah salah di sisi undang-undang; (vi) bahawa pernyataan oleh seorang saksi pihak pendakwaan ('ACP Mazlan') di bawah s 112 KAJ sepatutnya tidak ditunjukkan kepada beliau kerana ia melanggar s 159 Akta Keterangan 1950 ('Akta tersebut'); (vii) bahawa satu inferens buruk patut diambil terhadap pihak pendakwaan kerana kegagalannya memanggil sebagai saksi, Perdana Menteri, Peguam Negara, Tun Daim Zainuddin, Dato Seri Megat Junid, Ketua Polis Negara ('KPN'), Dato Ismail Che Ros, Dato Aziz Shamsuddin, ASP Zull Aznam ('ASP Zull Aznam'), Mohd Azmin bin Ali ('Azmin') dan Shamsidar bte Taharin ('Shamsidar'); (viii) bahawa laporan secara meluas berkenaan dengan keterangan

oleh saksi-saksi dalam media melemahkan nilai keterangan yang dikemukakan; (ix) bahawa Dato Mohd Said, Dato Amir Junus, ACP Mazlan ('ACP Mazlan'), DSP Abdul Aziz ('DSP Aziz') dan SAC Musa ('SAC Musa'), kesemuanya saksi-saksi pihak pendakwaan adalah rakan-rakan sejenayah; (x) bahawa keterangan oleh saksi-saksi pihak pendakwaan yang tertentu, iaitu Dato Mohd Said, Dato Amir Junus, ACP Mazlan, DSP Aziz, SAC Musa, Azizan dan Ummi adalah tidak boleh dipercayai; dan (xi) bahawa pihak pendakwaan tidak membuktikan satu kes prima facie terhadap tuduhan-tuduhan yang dibuat terhadap beliau.

Tertuduh menimbulkan beberapa alasan-alasan di dalam pembelaannya dan memanggil sejumlah 22 orang saksi untuk memberi keterangan bagi pihak beliau. Tertuduh mengatakan, antara lainnya, bahawa ahli-ahli politik penting yang tertentu telah berkomplot untuk menumbangkan beliau dan, untuk mencapai objektif tersebut, telah mendapatkan bantuan daripada Ummi untuk membuat pengataan-pengataan tersebut sebagai balasan untuk manfaat. Pihak pembelaan selanjutnya: (i) cuba untuk mengemukakan keterangan untuk tidak mempercayai Ummi ketika memeriksa Azmin sebagai seorang saksi pihak pembelaan; (ii) memohon untuk memainkan empat pita yang mengandungi perakaman satu perbualan di antara Ummi dan seorang Datuk Sng Chee Hua di London — Ummi telah dikatakan telah mengaku bahawa beliau adalah terlibat di dalam penerbitan Buku 50 Dalih di mana pengataan-pengataan terhadap tertuduh telah diulangi; (iii) menghujahkan bahawa satu jawapan kepada satu soalan yang ditanya kepada saksi defendan yang dibantah oleh pihak pendakwaan atas alasan bahawa jawapan yang akan diberi akan berjumlah kepada dengar cakap, adalah boleh terima untuk menunjukkan bahawa jawapan kepada soalan tersebut telah dibuat dan bukan sebagai bukti tentang kebenarannya; (vi) bercadang untuk mengemukakan keterangan berkenaan dengan permintaan oleh pihak polis kepada orang-orang untuk memalsukan keterangan terhadap tertuduh dan pengekstrakan pengakuan dari orang-orang mengatakan bahawa mereka telah diliwat oleh tertuduh untuk menyokong pembelaan tentang pengkomplotan oleh pihak polis; (v) menghujahkan bahawa keterangan saksi-saksi yang dicadangkan tersebut adalah keterangan langsung tentang pemalsuan keterangan terhadap tertuduh oleh pihak polis. Ini menyebabkan mahkamah mempertimbangkan sama ada ia mempunyai kuasa untuk memerlukan satu pihak mendedahkan kerelevanan keterangan seorang saksi yang dicadangkan sebelum saksi tersebut memberi keterangan; dan (vi) memanggil dua orang peguambela dan peguamcara sebagai saksi-saksi keterangan yang mana adalah berhubung kepada komunikasi mereka dengan klien-klien, oleh itu memaksa penentuan isu sama ada komunikasi-komunikasi tersebut adalah terlindung di bawah s 126 Akta tersebut.

Semasa penutupan kes oleh pihak pembelaan, sejumlah isu-isu perlu ditentukan oleh mahkamah, iaitu: (i) sama ada pernyataan

akhbar yang dikemukakan sebagai keterangan oleh pihak pembelaan boleh diambil sebagai bukti kebenaran kandungannya tanpa pembuat pernyataan dipanggil sebagai seorang saksi; (ii) sama ada pernyataan polis saksi-saksi pihak pendakwaan yang tertentu di bawah s 112 KAJ sepatutnya dikemukakan sebagai keterangan oleh pihak pendakwaan di bawah s 157 Akta tersebut; (iii) sama ada pernyataan di luar mahkamah oleh seorang tertuduh berjumlah kepada dengar cakap; (iv) sama ada pernyataan polis seorang saksi boleh ditunjukkan kepadanya semasa pemeriksaan balas; (v) apakah prinsip-prinsip yang mengawal perjalanan satu pembelaan; (vi) sama ada pihak pembelaan telah menimbulkan sebarang keraguan munasabah berkenaan dengan kebenaran kes pihak pendakwaan atau berkenaan dengan kesalahan tertuduh; (vii) hukuman yang sewajarnya dikenakan; (viii) sama ada hukuman harus bermula daripada tarikh penghukuman; (ix) sama ada kes ini adalah kes berpatutan untuk membenarkan pergantungan perlaksanaan sementara menunggu rayuan

Diputuskan, mensabitkan tertuduh sepertimana yang dituduh, dan menjatuhkan hukuman enam tahun pemenjaraan untuk setiap empat tuduhan, hukuman berjalan bersama berkuatkuasa dari tarikh sabitan:

(1) Tuduhan-tuduhan seperti yang dipinda merujuk hanya kepada pengataan-pengataan yang dibuat oleh Ummi dan Azizan. Apa yang memerlukan bukti adalah hanya fakta bahawa pengataan-pengataan yang menjadi persoalan telah dibuat. Kebenaran atau kepalsuan pengataan-pengataan tersebut bukanlah satu fakta yang menjadi isu dan oleh itu tiada keterangan boleh dibawa untuk membuktikan bahawa pengataan-pengataan tersebut adalah benar atau salah. Lebih-lebih lagi, pengekalan keterangan yang dikemukakan oleh pihak-pihak untuk menunjukkan kebenaran pengataan-pengataan tersebut membawa prejudis kepada tertuduh (lihat ms 32C–I). Dalam kes-kes sedemikian, Mahkamah Tinggi mempunyai kuasa sedia ada untuk memadam atau mengeluarkan perintah memadam perkara-perkara yang tidak relevan (lihat ms 33C–D).

(2) Satu kes tidak boleh dikatakan sebagai telah dibuktikan sehingga melampaui keraguan munasabah pada masa penutupan kes untuk pihak pendakwaan bila pembelaan dipanggil kerana semua keterangan tidak akan berada di hadapan mahkamah pada masa itu. Satu kes prima facie seperti yang diperuntukkan oleh s 180 yang baru dalam KAJ bermakna satu kes yang mana jika tidak dipatah akan mewajarkan satu sabitan (lihat ms 64B).

(3) Tiada sebab-sebab yang telah dikemukakan untuk menyokong penghujahan pihak pembelaan bahawa hanya dua tuduhan yang sepatutnya dibuat terhadap tertuduh. Walau bagaimanapun, tidak boleh dipertikaikan bahawa terdapat kedekatan dalam masa atau kedekatan dari segi tempat, tindakan yang berterusan dan tujuan bersesama berkenaan

dengan tuduhan-tuduhan tersebut. Setiap satu daripada tindakan-tindakan yang dirujuk di dalam keempat-empat tuduhan tersebut membentuk satu kesalahan yang berasingan berkenaan dengan mana tuduhan yang berasingan boleh secara sah di sisi undang-undang dibuat, seperti yang telah dilakukan (lihat ms 64D–I dan 65B).

(4) Memandangkan objek s 107 KAJ adalah semata-mata untuk memulakan fungsi penyiasatan pihak polis, ia tidak bermakna bahawa seorang yang membuat laporan tidak boleh dituduh jika penyiasatan mendedahkan satu kesalahan yang dilakukan olehnya. Atas fakta-fakta tersebut, penyiasatan dan pendakwaan tertuduh berdasarkan kepada ekshibit P16 dan/atau P56 (kedua-duanya merupakan laporan polis yang dibuat bagi pihak tertuduh) adalah sah di sisi undang-undang walaupun tanpa satu laporan polis terhadap beliau (lihat ms 66A–G).

(5) Pernyataan beramaran yang dibuat oleh tertuduh, yang bersifat membebaskan tertuduh daripada tuduhan, tidak sepatutnya dijadikan dasar satu perintah pembebasan pada masa penutupan kes untuk pendakwaan, memandangkan pada peringkat tersebut tertuduh belum lagi memberi keterangan, dan penerangan beliau tidak boleh diuji secara pemeriksaan balas (lihat ms 67G).

(6) Adalah salah untuk memulakan satu pendakwaan tanpa sebarang penyiasatan sama sekali ke atas faktor-faktor penting yang perlu dibuktikan. Bila penyiasatan sedemikian telah dijalankan, adalah tidak salah di sisi undang-undang untuk pihak polis menjalankan penyiasatan selanjutnya mengikut suatu keterdesakan kes yang berbangkit apabila perbicaraan tersebut telah bermula. Di atas fakta-fakta, tidak boleh dikatakan bahawa penyiasatan tidak lengkap bila tertuduh dituduh. Apa sekalipun, mahkamah tidak mementingkan bila dan bagaimana keterangan diperolehi tetapi hanya dengan kebolehterimaannya (lihat ms 68B–D).

(7) Satu pernyataan polis boleh ditunjukkan kepada seorang saksi sebelum beliau memberi keterangan dan tidak terdapat sebarang larangan perundangan terhadap ini (lihat ms 69F); *Moomin bin Seman v PP* [1993] 3 MLJ 282 tidak diikut. Seksyen 159 Akta tersebut tidak terpakai disebabkan operasinya adalah terhad kepada pernyataan semasa dan pernyataan di sini bukanlah pernyataan sedemikian. Apa sekalipun, s 159 adalah terhad dalam operasinya kepada menyegarkan daya ingatan semasa di bawah pemeriksaan. Selanjutnya, saksi tersebut (ACP Mazlan) tidak diperiksa balas melampaui menyoal beliau sama ada beliau telah melihat pernyataan beliau. Pemeriksaan balas sepatutnya diteruskan dengan lebih lanjut supaya membolehkan mahkamah menentukan sama ada pembelaan

telah diprejudiskan oleh saksi yang telah melihat pernyataan tersebut (lihat ms 69F–H).

(8) Kegagalan pihak pendakwaan untuk memanggil Perdana Menteri, Peguam Negara, KPN dan Dato Ismail Che Ros tidak padah kepada kesnya kerana keterangan daripada mereka adalah tidak perlu untuk membuka naratif yang menjadi asas kes pihak pendakwaan. Berkenaan dengan Tun Daim Zainuddin, Dato Seri Megat Junid, Dato Aziz Shamsuddin, ASP Zull Aznam, Azmin dan Shamsidar, keterangan yang sedia ada menunjukkan bahawa peranan mereka dalam kes tersebut adalah minima dan mereka tidak merupakan saksi-saksi pihak pendakwaan yang penting. Oleh itu, kegagalan pihak pendakwaan untuk memanggil mereka sebagai saksi-saksi adalah tidak padah. Apa sekalipun, kesemua saksi-saksi yang dirujuk oleh pihak pembelaan telah diserahkan kepada pihak pembelaan dan ia telah melaksanakan haknya untuk memanggil kesemua mereka, kecuali Peguam Negara. Ini mengecualikan pemakaian inferens buruk dalam s 114(g) Akta tersebut memandangkan kepada fakta bahawa keterangan pihak pendakwaan dapat membuktikan satu kes prima facie tanpa mereka (lihat ms 75A).

(9) Bantahan pihak pembelaan bahawa publisiti media melemahkan nilai keterangan adalah berasas. Ia adalah bersamaan dengan seorang yang berada dalam mahkamah sementara keterangan diberikan dan kemudiannya dipanggil sebagai seorang saksi. Kes-kes tempatan telah mengambil pandangan bahawa fakta bahawa seorang saksi berada dalam mahkamah semasa perbicaraan berjalan bukan merupakan dasar untuk enggan membenarkannya memberi keterangan, walaupun ia mungkin mengurangkan kepentingan yang diberikan kepada keterangan sedemikian yang mungkin diberi (lihat ms 75D).

(10) Tanpa penyertaan oleh Dato Mohd Said, Dato Amir Junus, ACP Mazlan dan DSP Aziz, tertuduh tidak akan boleh melakukan kesalahan-kesalahan tersebut. Oleh kerana mereka telah secara aktif mengambil bahagian dalam kesalahan-kesalahan yang dilakukan oleh tertuduh, mereka merupakan rakan-rakan sejenayah. Akan tetapi, adalah jelas bahawa pegawai-pegawai polis tersebut tidak merupakan peserta-peserta yang rela dalam kesalahan-kesalahan tersebut tetapi mangsa kepadanya, bertindak di bawah tekanan yang mungkin memerlukan ketegasan untuk menentangnya. Dalam keadaan sedemikian, penggantungan boleh dibuat kepada keterangan mereka yang tidak disokong tertakluk kepada keterangan tersebut didapati sebagai boleh dipercayai. Berkenaan dengan SAC Musa, beliau tidak mempunyai mens rea dalam melakukan kesalahan-kesalahan tersebut oleh tertuduh dan

oleh itu beliau tidak merupakan seorang rakan sejenayah (lihat ms 78D–E). A

(11) Dengan tidak terjejas dalam pemeriksaan balas bukanlah dengan sendirinya satu ujian kebolehpercayaan yang serba mencukupi. Kemungkinan atau ketidakmungkinan yang sedia ada tentang satu fakta yang menjadi isu mestilah menjadi pertimbangan yang utama. Dalam mempertimbangkan percanggahan dan penyangkalan dalam satu kes, apa yang harus ditentukan oleh mahkamah adalah sama ada mereka adalah sedemikian sifatnya sehingga menyebabkan saksi tersebut tidak boleh dipercayai sama sekali dan mengakibatkan keterangan tidak bernilai dan tidak boleh dipercayai. Dalam ketiadaan sebarang percanggahan dan sebarang elemen ketidakmungkinan yang sedia ada, keterangan mana-mana saksi, sama ada seorang saksi polis atau tidak, yang memberi keterangan atas sumpah, biasa patut diterima. Atas fakta, mahkamah setelah meneliti keterangan Dato Mohd Said, Dato Amir Junus, ACP Mazlan, DSP Aziz, SAC Musa, Azizan dan Ummi, dan mendapati bahawa keterangan saksi-saksi tersebut adalah konsisten dengan satu sama lain dan dengan keterangan pihak pendakwaan yang lain dan adalah boleh dipercayai (lihat ms 79C–H). B C D

(12) Untuk membuktikan tuduhan-tuduhan di bawah s 2(1) Ordinan tersebut, pihak pendakwaan hendaklah membuktikan bahawa tertuduh adalah seorang Anggota pentadbiran pada masa yang penting dan bahawa semasa menjadi ahli tersebut, beliau melakukan perbuatan rasuah. Atas cabang yang pertama, pihak pendakwaan telah mengemukakan keterangan prima facie untuk menunjukkan bahawa tertuduh adalah Timbalan Perdana Menteri dan Menteri Kewangan pada masa yang penting dan oleh itu seorang Anggota pentadbiran dalam makna s 2(2) Ordinan tersebut. Perbuatan rasuah di bawah cabang kedua tidak memerlukan bahawa perbuatan yang dilakukan berhubungan dengan pelaksanaan tugas-tugas pegawai yang berkenaan. Ujiannya adalah sama ada perbuatan yang dilakukan akan dilakukan atau boleh dilakukan secara berkesan jika orang yang dipersoalkan bukan merupakan anggota yang dia sebenarnya merupakan. Di atas fakta-fakta, pihak pendakwaan telah membuktikan satu kes prima facie untuk menunjukkan bahawa tertuduh, semasa menjadi Timbalan Perdana Menteri dan Menteri Kewangan, telah di dalam kedudukan tersebut melakukan perbuatan-perbuatan rasuah berkenaan dengan keempat-empat tuduhan yang dibuat terhadap beliau dalam makna s 2(1) Ordinan tersebut (lihat ms 111A–C dan 143D). E F G H

(13) Bila seorang saksi telah disoal dalam pemeriksaan balas satu soalan yang adalah secara langsung relevan kepada perkara yang menjadi isu, dan beliau memberikan satu penafian atau sesuatu I

jawapan yang tertentu, beliau boleh disangkal oleh keterangan bebas atas kesemua perkara yang relevan kepada isu. Tetapi bilamana soalan tersebut adalah berkaitan dengan satu fakta yang kolateral kepada isu tersebut, yakni, bilamana ia ditanya semata-mata untuk mencabar kebolehpercayaan seorang saksi dan saksi tersebut memberikan satu jawapan, beliau tidak boleh disangkal. Di atas fakta-fakta, kebenaran atau kepalsuan pengataan-pengataan yang dibuat oleh Ummi adalah tidak relevan. Apa yang relevan adalah fakta bahawa beliau telah membuat pengataan-pengataan tersebut. Jawapan-jawapan yang diberikan oleh beliau dalam menjawab soalan-soalan yang menjadi isu hendaklah diambil sebagai muktamad dan tidak boleh disangkal (lihat ms 164G–165A).

(14) Perbualan yang dirakam tersebut tidak relevan kepada fakta yang menjadi isu berkenaan dengan pembuatan pengataan-pengataan tersebut oleh Ummi. Selanjutnya, keterangan menunjukkan bahawa pita-pita tersebut telah diubah atas arahan tertuduh. Memandangkan tiada keterangan untuk menunjukkan bahawa perbualan yang dirakamkan tersebut adalah satu kisah yang tepat tentang satu perbualan yang telah berlaku, ia adalah tidak boleh terima (lihat ms 167D–F); *Mohd Ali Jaafar v PP* [1998] 4 MLJ 210 diikut.

(15) Satu pernyataan yang dibuat kepada seorang saksi oleh seorang yang tidak dipanggil sebagai saksi mesti ditunjuk kerelevanannya kepada satu fakta yang menjadi isu. Jika tujuan untuk memasukkan pernyataan sedemikian tidak ditunjukkan, mahkamah tidak akan berada dalam kedudukan untuk membuat perintah berkenaan dengan kerelevanan pengataan tersebut berkenaan dengan fakta-fakta yang menjadi isu dan, jika tidak relevan langsung, pengataan tersebut akan berjumlah kepada dengar cakap dan oleh itu menjadi tidak boleh terima. Dalam kes semasa, peguambela gagal untuk menunjukkan kerelevanan jawapan yang dicadangkan dan oleh itu, bantahan tentang dengar cakap yang dikemukakan oleh pihak pendakwaan adalah dibenarkan (lihat ms 168G–I dan 169F).

(16) Di bawah s 136(1) Akta tersebut, mahkamah mempunyai kuasa dan adalah dipertanggungjawabkan untuk menyiasat mengenai kerelevanan seorang saksi yang dicadangkan sebelum beliau memberi keterangan. Dalam kes semasa, tiada keterangan yang dikemukan oleh pihak pembelaan untuk menunjukkan bahawa terdapat sebarang pemalsuan keterangan oleh pihak polis. Keterangan yang dicadangkan oleh pihak pembelaan berhubung dengan fakta-fakta kolateral dan keterangan sedemikian pada amnya adalah tidak boleh terima. Walau bagaimanapun, keterangan yang dicadangkan adalah boleh terima di bawah ss 11 dan 15 Akta tersebut jika terdapat pematuhan kepada keperluan-keperluan seksyen tersebut. Di atas fakta, keterangan yang dicadangkan adalah tidak boleh

terima sebagai keterangan di bawah s 11 kerana keterangan yang dicadangkan adalah tidak berhubungan, walaupun kognat, dengan keterangan dalam kes semasa. Keterangan yang dicadangkan adalah juga tidak boleh terima sebagai keterangan sama fakta disebabkan fakta dalam kes tidak mempunyai talian dengan keterangan yang dicadangkan dari segi cara dan keadaan (lihat ms 174I–175A dan 177D).

(17) Kegagalan klien untuk menuntut perlindungan bila diperiksa balas tidak berjumlah kepada satu persetujuan nyata yang diberi oleh beliau kepada penasihat perundangan beliau untuk mendedahkan komunikasi yang mana adalah, jika tidak, terlindung. Dalam kes semasa, peguamcara-peguamcara yang telah membantu satu sama lain dengan tawaran salingan untuk bantuan yang lanjut di dalam urusan klien-klien masing-masing akan adalah ejen kepada satu sama lain. Dalam keadaan sedemikian, s 127 Akta tersebut akan mengawal keadaan tersebut. Di atas fakta-fakta, keterangan yang dicadangkan dari kedua-dua peguambela dan peguamcara tersebut adalah terlindung (lihat ms 180G dan 181C–F).

(18) Anggapan ketulenan suratkhabar dalam s 81 Akta tersebut adalah boleh disangkal mengikut s 4(2). Satu pernyataan fakta di dalam satu suratkhabar adalah dengar cakap semata-mata dan oleh itu adalah tidak boleh terima sebagai keterangan tanpa pembuat pernyataan tersebut berada dalam mahkamah dan mendeposkan bahawa ia telah melihat fakta yang dilaporkan tersebut. Di atas fakta-fakta, pihak pembelaan telah memanggil pemberita-pemberita yang telah mengesahkan bahawa pernyataan-pernyataan akhbar masing-masing merupakan kisah mereka dan memberi keterangan bahawa tiada percubaan dilakukan oleh orang-orang yang membuat ucapan-ucapan tersebut untuk membetulkannya. Oleh itu, laporan-laporan akhbar yang dikemukakan oleh pembelaan adalah boleh terima sebagai keterangan untuk membuktikan kebenaran kandungan mereka (lihat ms 183G–I).

(19) Pihak pendakwaan boleh, jika ia mengingini, mengetepikan perlindungan yang terikat kepada satu pernyataan polis yang direkodkan di bawah s 112 KAJ dan menggunakannya untuk tujuan s 157 Akta tersebut. Kegagalan untuk menggunakan pernyataan sedemikian, walau bagaimanapun, tidak akan menjadi padah kepada kes pendakwaan kerana hanya pihak pendakwaan yang akan merasakannya kerana tidak menggunakan satu pernyataan konsisten yang lebih awal untuk memperkukuh kebolehpercayaan seorang saksi yang telah dicabar. Selanjutnya, disebabkan satu pernyataan polis adalah terlindung, tiada inferens buruk boleh diambil kerana ia tidak dikemukakan (lihat ms 186G–H).

(20) Pernyataan di luar mahkamah seorang tertuduh adalah berjumlah kepada dengar cakap. Kebolehterimaan pernyataan-

A pernyataan sedemikian adalah dikawal oleh ss 17, 18 dan 21 Akta tersebut yang adalah berkenaan dengan pengakuan. Seksyen 18(1) memperuntukkan bahawa pernyataan-pernyataan yang dibuat oleh satu pihak kepada prosiding adalah pengakuan dan seorang tertuduh adalah 'pihak kepada prosiding'. Oleh itu, pernyataan sendiri seorang pihak adalah B dalam kesemua kes boleh terima terhadap dirinya. Satu pengakuan adalah dianggap sebagai satu pengecualian kepada kaedah dengar cakap dan adalah keterangan substantif fakta yang diterima (lihat ms 187I–188F).

(21) Pernyataan polis telah ditunjukkan kepada saksi ('MaAmin') C dengan persetujuan penuh dan pengetahuan, dan, dengan penyertaan oleh pihak pembelaan. Tidak terdapat apa-apa yang salah untuk pihak pendakwaaan menunjukkan pernyataan tersebut kepada saksi tersebut. Pihak pendakwaan dalam melakukan sedemikian, bertindak selaras dengan bahagian kedua s 145(1) Akta tersebut. Perkataan-perkataan 'yang mana D akan digunakan untuk tujuan menyangkalnya' bermakna bahawa sebelum proses penyangkalan boleh berlaku, pernyataan tersebut boleh ditunjukkan kepada saksi tersebut (lihat ms 192C–G).

(22) Jika tertuduh berniat untuk mencadangkan bahawa seorang E daripada saksi pihak pendakwaan tidak bercakap benar tentang satu perkara yang tertentu, perhatian saksi tersebut mesti diarahkan kepada fakta itu dalam pemeriksaan balas. Sifat pembelaan tersebut adalah ditentukan bukan sahaja daripada keterangan tertuduh sahaja tetapi juga daripada arus pemeriksaan balas saksi-saksi pendakwaan dan daripada F penghujahan-penhujahan peguambela tertuduh pada masa penutupan perbicaraan. Adalah penting untuk tertuduh mengemukakan kes beliau yang penting kepada saksi-saksi pendakwaan dalam pemeriksaan balas (lihat ms 193A–194A).

(23) Di atas fakta-fakta, setelah mempertimbangkan keseluruhan G keterangan yang dikemukkan, mahkamah berpuas hati bahawa memandangkan kepada penyangkalan dan percanggahan yang banyak dalam keterangan pembelaan, bukan sahaja dalam keterangan tertuduh sendiri tetapi juga dalam keterangan saksi-saksi beliau, pembelaan tersebut tidak patut menerima sebarang kepercayaan. Pihak pembelaan juga gagal untuk H menimbulkan sebarang keraguan munasabah berkenaan dengan kebenaran kes pendakwaan atau berkenaan dengan kesalahan tertuduh. Pihak pendakwaan telah membuktikan kes mereka terhadap tertuduh hingga melampaui keraguan munasabah atas keempat-empat tuduhan tersebut dan tertuduh I adalah bersalah seperti yang dituduh (lihat ms 229E).

(24) Pernyataan tertuduh kepada mahkamah mengenai hukuman tertumpu pada dakwaan pengkomplotan politik dan kecaman

badan kehakiman dan ia bukanlah rayuan meringankan hukuman yang berpatutan. Ini menunjukkan bahawa bukan sahaja terdapat ketiadaan rasa sesal pada pihak tertuduh, tetapi juga keengganan untuk membuat rayuan meringankan hukuman (lihat ms 229G–230C). A

(25) Apa-apa hukuman yang dikenakan untuk kesalahan dibawah s 2(1) Ordinan tersebut hasuslah mengambilkira kedudukan yang telah disandang oleh ahli politik atau pegawai awam berkaitan dan sifat salahguna jawatannya. Berdasarkan atas fakta, tertuduh adalah pegawai kedua tinggi dalam negara pada masa yang penting. Cara di mana dia telah menyalahgunakan jawatannya juga menyerang pusat pentadbiran keadilan dan keseriusannya tidak seharusnya dianggar kurang. Dalam keadaan sebegini, hukuman pemenjaraan yang sewajarnya haruslah dikenakan (lihat ms 230G–231C). B C

(26) Penyimpangan dari keadah umum di bawah s 282(d) KAJ — yang memperuntukkan bahawa sesuatu hukuman berkuatkuasa dari tarikh penghukuman — adalah mengikut budi bicara mahkamah. Oleh kerana ia adalah kuasa budi bicara, sesuatu permohonan haruslah dibuat untuknya oleh tertuduh bila rayuan meringankan hukuman dibuat. Di mana seseorang telah ditahan sebelum sabitannya, jangkamasa tersebut boleh dipertimbangkan dalam menentukan hukuman. Adalah berpatutan untuk mengundurkan tarikh hukuman di mana tahanan sebelum perbicaraan merujuk secara eksklusif kepada kesalahan di mana hukuman dijatuhkan. Berdasarkan fakta, tertuduh telah ditahan untuk kesalahan-kesalahan berlainan dari tuduhan-tuduhan yang dia telah didapati bersalah. Justeru itu, permulaan hukuman dari tarikh penahanannya adalah tidak wajar dan sebaliknya haruslah bermula dari tarikh sabitan (lihat ms 232B–E dan 233A–D). D E F

(27) Mengambilkira faktor-faktor seperti berapa beratnya kesalahan di mana tertuduh telah didapati bersalah, pembelaan yang dikemukakan yang terdiri daripada fikiran terkemudian dan percubaan penggunan keterangan yang telah diubah, maka adalah tidak berpatutan untuk kes ini diberi penggantungan perlaksanaan sementara menunggu rayuan (lihat ms 233E). G

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Notes

For cases on the Emergency (Essential Powers) Ordinance, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 329–331.

For cases on duplicity of charges, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 696–714.

For cases on defence generally, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1118–1164.

For a case on police report, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1887.

For cases on sentencing generally, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2213–2674.

For a case on mitigation, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2523.

For cases on sentencing in corruption cases, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2325–2333.

For cases on trial generally, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2828–3189.

For cases on close of prosecution case, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2899–2915.

For cases on accomplice generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 5–31.

For cases on failure of prosecution to call witness, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 105–107.

For cases on hearsay evidence generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1260–1339.

For a case on newspaper evidence, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) para 1295.

For a case on statement made by person not called, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) para 1324.

For cases on legal professional privilege, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1717–1727.

For cases on tape recording, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2022–2024.

For cases on hearsay evidence generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1260–1339.

For cases on statements made by witnesses generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1827–2011.

For a case on cross-examination of witness, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) para 2053.

For cases on calling of witness by defence, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2058–2060.

Mohtar bin Abdullah (*Heliliah Yusof, Abdul Gani Patail, Azahar bin Mohamed, Mohd Yusof Haji Zainal Abidin, Stanley C Augustin, Nordin Hassan* and *Shamsul Sulaiman* with him) (Attorney General's Chambers) for the prosecution.

Raja Aziz Addruse (*Haji Sulaiman Adbullah, Christopher Fernando, Gurbachan Singh Pannu, Zainur Zakaria, Pawancheek Marican, Kamar*

Ainiah Kamaruzaman, Sankara N Nair, Zulkifli Noordin and *Robyn Choi* with him) (*Raja Aziz Addruse*) for the defence. A

Augustine Paul J: Dato' Seri Anwar bin Ibrahim ('the accused'), the former Deputy Prime Minister and Minister of Finance, Malaysia was produced before me on 5 October 1998 charged with five counts of sodomy under s 377B of the Penal Code and five counts of corrupt practices under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('the Ordinance No 22'). He claimed trial to all ten charges. The prosecution applied for four charges under s 2(1) of Ordinance No 22 to be tried together pursuant to s 165 of the Criminal Procedure Code (FMS Cap 6). The defence did not object. I allowed the application. The four charges as originally framed read as follows: B C

> Bahawa kamu Dato' Seri Anwar bin Ibrahim dituduh atas arahan Pendakwa Raya dan pertuduhan-pertuduhan ke atas kamu adalah seperti berikut:
>
> *Pertuduhan Pertama*
>
> Bahawa kamu, dari 12 Ogos 1997 hingga 18 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, telah melakukan perbuatan rasuah di mana kamu telah: D
>
> > mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Diraja Malaysia memperolehi pengakuan bertulis daripada Azizan bin Abu Bakar bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding yang bersifat jenayah, dan akibatnya Azizan bin Abu Bakar telah memberi pengakuan bertulis bertarikh 18 Ogos 1997 kepada Perdana Menteri seperti mana yang diarahkan, E
>
> dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan No 22 (Kuasa-Kuasa Perlu) Darurat 1970. F
>
> *Pertuduhan Kedua*
>
> Bahawa kamu, pada 27 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, telah melakukan perbuatan rasuah di mana kamu telah: G
>
> > mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia menggesa Azizan bin Abu Bakar supaya memberi kenyataan umum bertulis bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding yang bersifat jenayah dan akibatnya Azizan bin Abu Bakar telah memberikan kenyataan umum bertulis seperti mana yang diarahkan, H
>
> dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan No 22 (Kuasa-Kuasa Perlu) Darurat 1970. I
>
> *Pertuduhan Ketiga*
>
> Bahawa kamu pada 12 Ogos 1997 hingga 18 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam

Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, telah melakukan perbuatan rasuah di mana kamu telah:

> mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi pengakuan bertulis daripada Ummi Hafilda bte Ali bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding bersifat jenayah dan akibatnya Ummi Hafilda bte Ali telah memberi pengakuan bertulis bertarikh 18 Ogos 1997 kepada Perdana Menteri sepertimana yang diarahkan,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan No 22 (Kuasa-Kuasa Perlu) Darurat, 1970.

Pertuduhan Keempat

Bahawa kamu pada 27 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, telah melakukan perbuatan rasuah di mana kamu telah:

> mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia menggesa Ummi Hafilda bte Ali supaya memberi kenyataan umum bertulis bagi menafikan salah laku seks dan liwat yang dilakukan oleh kamu dengan tujuan melindungi diri kamu daripada sebarang tindakan atau prosiding bersifat jenayah dan akibatnya Ummi Hafilda bte Ali telah memberikan kenyataan umum bertulis bertarikh 29 Ogos 1997 seperti mana yang diarahkan,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan No 22 (Kuasa-Kuasa Perlu) Darurat 1970.

(English translation of the charges):

That you, Dato' Seri Anwar bin Ibrahim are charged at the instance of the Public Prosecutor, and the charges against you are as follows

First Charge

That you, between 12 August 1997 and 18 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, committed corrupt practice whereby you had:

> directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to obtain a written admission from Azizan bin Abu Bakar to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings, and as a result of which Azizan bin Abu Bakar had thereby made a written admission dated 18 August 1997 to the Prime Minister as directed,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Second Charge

That you, on or about 27 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, committed corrupt practice whereby you had:

> directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to urge Azizan bin Abu Bakar to give a written public statement to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings and as a result of which Azizan bin Abu Bakar had thereby given a written public statement as directed,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Third Charge

That you, between 12 August 1997 and 18 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance committed corrupt practice whereby you had:

> directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to obtain a written admission from Ummi Hafilda bte Ali to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings, and as a result of which Ummi Hafilda bte Ali had thereby made a written admission dated 18 August 1997 to the Prime Minister as directed,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Fourth Charge

That you, on or about 27 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, committed corrupt practice whereby you had:

> directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II, Royal Malaysian Police to urge Ummi Hafilda bte Ali to give a written public statement to deny sexual misconduct and sodomy committed by you for the purpose of protecting yourself against any criminal action or proceedings and as a result of which Ummi Hafilda bte Ali had thereby given a written public statement dated 29 August 1997 as directed,

and you have thereby committed an offence punishable under s 2(1) Emergency (Essential Powers) Ordinance No 22/1970.

On 13 January 1999, the prosecution applied for leave to amend all four charges at the close of its case. It must be observed that the original charges relate to abuse of power under s 2(1) of Ordinance No 22. The references

in the charges to sexual misconduct and sodomy 'committed' by the accused relate to another offence. This does not accord with s 163 of the Criminal Procedure Code which provides that for every distinct offence of which any person is accused there shall be a separate charge. In order to avoid the duplicity in the charges, I allowed the application to amend them. The four charges as amended read as follows:

Pertuduhan Pertama

Bahawa kamu, dari 12 Ogos 1997 hingga 18 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, dan dalam kapasiti tersebut, telah melakukan perbuatan rasuah di mana kamu telah:

> mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi kenyataan bertulis daripada Azizan bin Abu Bakar yang dialamatkan kepada YAB Perdana Menteri, bagi menafikan dakwaan liwat seperti yang terkandung di dalam 'Pengakuan Bersumpahnya' bertarikh 5 Ogos 1997, yang mana mereka telah perolehi seperti yang diarahkan, dalam bentuk satu kenyataan bertulis bertarikh 18 Ogos 1997, untuk faedah diri kamu, bagi menyelamatkan diri kamu daripada keaiban,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan Dharurat (Kuasa-Kuasa Perlu) No 22/1970.

Pertuduhan Kedua

Bahawa kamu, pada 27 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, dan dalam kapasiti tersebut, telah melakukan perbuatan rasuah di mana kamu telah:

> mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi kenyataan bertulis daripada Azizan bin Abu Bakar bagi menafikan dakwaan liwat seperti yang terkandung di dalam 'Pengakuan Bersumpahnya' bertarikh 5 Ogos 1997, yang mana mereka telah perolehi seperti yang diarahkan, dalam bentuk satu kenyataan umum bertulis, untuk faedah diri kamu sendiri di mana kamu telah menggunakannya bagi tujuan melindungi diri kamu daripada sebarang tindakan jenayah,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan Darurat (Kuasa-Kuasa Perlu) No 22/1970.

Pertuduhan Ketiga

Bahawa kamu pada 12 Ogos 1997 hingga 18 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, dan dalam kapasiti tersebut, telah melakukan perbuatan rasuah di mana kamu telah:

mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi kenyataan bertulis daripada Ummi Hafilda bte Ali yang dialamatkan kepada YAB Perdana Menteri, bagi menafikan dakwaan salah laku seks dan liwat seperti yang terkandung di dalam laporan sulitnya bertajuk 'Perihal Salah Laku Timbalan Perdana Menteri' bertarikh 5 Ogos 1997, yang mana mereka telah perolehi seperti yang diarahkan, dalam bentuk satu kenyataan bertulis bertarikh 18 Ogos 1997, untuk faedah diri kamu, iaitu, bagi menyelamatkan diri kamu daripada keaiban,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan Darurat (Kuasa-Kuasa Perlu) No 22/1970.

Pertuduhan Keempat

Bahawa kamu pada 27 Ogos 1997, di Kediaman Rasmi Timbalan Perdana Menteri, No 47, Jalan Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, semasa menjadi seorang anggota pentadbiran, iaitu, menjawat jawatan Timbalan Perdana Menteri dan Menteri Kewangan, dan dalam kapasiti tersebut, telah melakukan perbuatan rasuah di mana kamu telah:

mengarahkan Dato Mohd Said bin Awang, Pengarah Cawangan Khas dan Amir bin Junus, Timbalan Pengarah Cawangan Khas II, Polis Di Raja Malaysia memperolehi kenyataan bertulis daripada Ummi Hafilda bte Ali bagi menafikan dakwaan salah laku seks dan liwat seperti yang terkandung di dalam laporan sulitnya bertajuk 'Perihal Salah Laku Timbalan Perdana Menteri' bertarikh 5 Ogos 1997, yang mana mereka telah perolehi seperti yang diarahkan dalam bentuk satu kenyataan umum bertulis bertarikh 29 Ogos 1997, untuk faedah diri kamu sendiri di mana kamu telah menggunkannya bagi tujuan melindungi diri kamu daripada sebarang tindakan jenayah,

dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 2(1) Ordinan Darurat (Kuasa-Kuasa Perlu) No 22/1970.

(English translation of the charges):

First Charge

That you, from 12 August 1997 until 18 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, and in such capacity, committed corrupt practice in that you:

directed Dato Mohd Said bin Awang, Director of the Special Branch and Amir bin Junus, Deputy Director II of the Special Banch, Royal Malaysian Police, to obtain a written statement from Azizan bin Abu Bakar addressed to YAB Prime Minister denying his allegation of sodomy as contained in his 'Pengakuan Bersumpah' dated 5 August 1997, which they obtained as directed, in the form of a written statement dated 18 August 1997, for your advantage, to wit, to save yourself from embarrassment,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Second Charge

That you, on 27 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance and in such capacity committed corrupt practice in that you:

directed Dato Mohd Said bin Awang, Director of the Special Branch and Amir bin Junus, Deputy Director II of the Special Branch, Royal Malaysian Police, to obtain a written statement from Azizan bin Abu Bakar to deny the allegation of sodomy as contained in his 'Pengakuan Bersumpah' dated 5 August 1997, which they obtained as directed, in the form of a *kenyataan umum*, for your advantage, to wit, you used it for the purpose of protecting yourself from any criminal action,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Third Charge

That you, from 12 August 1997 until 18 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, and in such capacity, committed corrupt practice in that you:

directed Dato Mohd Said bin Awang, Director of the Special Branch and Amir bin Junus, Deputy Director II of the Special Branch, Royal Malaysian Police, to obtain a written statement from Ummi Hafilda bte Ali addressed to YAB Prime Minister denying the allegations of sexual misconduct and sodomy as contained in her confidential report entitled 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5 August 1997, which they obtained as directed, in the form of a written statement dated 18 August 1997, for your advantage, to wit, to save yourself from embarrassment,

and you have thereby committed an offence punishable under s 2(1), Emergency (Essential Powers) Ordinance No 22/1970.

Fourth Charge

That you, on 27 August 1997, at the Official Residence of the Deputy Prime Minister, No 47, Damansara Road, in the Federal Territory of Kuala Lumpur, while being a Member of the administration, to wit, holding the post of Deputy Prime Minister and Minister of Finance, and in such capacity, committed corrupt practice in that you:

directed Dato Mohd Said bin Awang, Director of the Special Branch and Amir bin Junus, Deputy Director II of the Special Branch, Royal Malaysian Police, to obtain written statement from Ummi Hafilda bte Ali denying the allegations of sexual misconduct and sodomy as contained in her confidential report entitled 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5 August 1997, which they obtained as directed, in the form of a *kenyataan umum* dated 29 August 1997, for your advantage, to wit, you used it for the purpose of protecting yourself from any criminal action,

and you have thereby committed an offence punishable under s 2(1) Emergency (Essential Powers) Ordinance No 22/1970. A

The accused claimed trial to the amended charges and did not wish to recall any of the prosecution witnesses. Having listened to the submission of both parties and before calling upon the accused to enter his defence, I made a formal amendment to the English version of the second and fourth B charges and the addition of words to the first and third charges to specify that the written statements were obtained as directed. The accused was given the opportunity to plead to the latter two charges to which he claimed trial.

I pause for a while to say that after the charges were amended, I ruled C that the truth or falsity of the allegations referred to in the charges is not relevant and accordingly expunged from the record all evidence relating to such matters. I made the ruling as the amended charges only refer to directions given by the accused to Dato Mohd Said and Dato Amir Junus to obtain statements from Ummi and Azizan to deny allegations of sexual misconduct and sodomy made by them against him and the advantage D obtained therefrom. It will therefore be seen that the charges refer, inter alia, to only allegations made by Ummi and Azizan against the accused. The word 'allegation' is defined in *Webster's New World Dictionary* (3rd Ed) as, inter alia: '... an assertion made without proof ...'. It is clear that an assertion made without proof may or may not be capable of proof. Thus an allegation need not be true. This makes it manifestly patent that the onus of E proof on the prosecution is the same whether the allegations are true or false. What requires proof is only the fact that the allegations in question were made. The corollary is that the truth or falsity of the allegations is not a fact in issue. Thus no evidence can be led to establish that the allegations are true or false pursuant to s 5 of the Evidence Act 1950 unless declared to F be relevant by the said Act. Such evidence is not admissible under s 7 of the said Act as causative facts as it does not relate to a fact in issue; nor is it admissible to show motive under s 8 of the said Act as it does not relate to a fact in issue; nor as explanatory or introductory facts under s 9 of the said Act as it does not relate to a fact in issue. Consequently, proof that the allegations are false does not in any way lend weight to the defence of the G accused and is therefore irrelevant. Accordingly, the onus on the prosecution is only to prove that Ummi and Azizan made the allegations and that the accused, while being a Member of the administration, and in such capacity, directed Dato Mohd Said and Dato Amir Junus to obtain the denial letters with regard to the allegations and the advantage he obtained therefrom. H

In the circumstances, the retention of the evidence adduced by the prosecution to show the truth of the allegations is highly prejudicial to the accused on the principle laid down in the celebrated case of *John Makin and Sarah Makin, His Wife v The Attorney-General for New South Wales* [1894] AC 57 where Lord Herschell LC said at p 65: I

> ... It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion

A that the accused is a person likely from his criminal conduct or character, to have committed the offence for which he is being tried.

It is prejudicial to the accused for two reasons. Firstly, when an accused is called upon to answer a charge he is entitled to have to meet only relevant and admissible evidence. Secondly, the existence of such evidence on the B record to show that the allegations could be true may tend to suggest the inference that the accused wanted them to be retracted. In order to ensure that this does not have a prejudicial effect in the mind of the person hearing the case, it must be disregarded (see *Mohamad Kassan bin Hassan v PP* [1950] MLJ 295). It was for that purpose that I had to take a drastic step to guarantee that my mind is not moved in any manner whatsoever to the C detriment of the accused. A High Court has inherent power to make any order for the purpose of securing the ends of justice. This extends to expunction or ordering expunction of irrelevant matters (see *Dr Raghubir Saran v State of Bihar* AIR 1964 SC 1). Therefore, with the sole objective of ensuring that the accused is not prejudiced in any way by the presence of such evidence on the record, I ordered that it be expunged. I interpolate to D add that I adhered strictly to the rationale behind the expunction of the irrelevant evidence throughout the trial. But, unfortunately, the parties, more so the defence, were not like-minded. Therefore, when both parties attempted to touch on the truth or falsity of the allegations in the course of their submissions at the end of the case for the prosecution, I found it E absolutely necessary to issue the following direction when I called upon the accused to enter his defence:

> I find it necessary and desirable to say a few words to guide the conduct of the case hereafter in view of the fact that counsel on both sides had touched upon the truth of the allegations in the four amended charges. It is to be noted that the amended charges merely refer to allegations of sodomy and sexual F misconduct and not to the actual commission of sodomy or sexual misconduct by the accused. The truth or falsity of the allegations are therefore not in issue in this trial. Any evidence or argument that has or is to be directed upon that matter is therefore irrelevant and inadmissible. Accordingly, the evidence that is proposed to be elicited to meet the prima facie case established by the prosecution must be confined only to the issues raised in the amended charges.

G Further attempts by the defence to go into this issue in the course of the trial were met with rigid sanctions from me.

THE CASE FOR THE PROSECUTION

H Ummi Hafilda bte Ali ('Ummi') is the sister of Mohd Azmin bin Ali ('Azmin') who is married to Shamsidar bte Taharin ('Shamsidar'). Shamsidar had a driver called Azizan bin Abu Bakar ('Azizan'). Azmin was the private secretary of the accused while ASP Zull Aznam bin Haji Haron ('ASP Zull Aznam') was his ADC. The Director of the Special Branch at the material time was Dato Mohd Said bin Awang ('Dato Mohd Said') while I Dato Amir bin Junus ('Dato Amir Junus') was his Deputy Director II. ACP Mazlan bin Haji Mohd Din ('ACP Mazlan') and DSP Abdul Aziz bin Hussein ('DSP Aziz') were two of their officers. SAC I Musa bin Haji

Hassan ('SAC Musa') is the Assistant Director of the Prosecution and Legal Division of the Criminal Investigation Department ('CID'). A

Ummi wrote a letter (exh P14A, B and C) dated 5 August 1997 entitled 'Perihal Salah Laku Timbalan Perdana Menteri' addressed to YAB Prime Minister containing allegations of sexual misconduct and sodomy allegedly committed by the accused. Exhibit P14A is the covering letter signed by Ummi while exh P14B is her report. Exhibit P14C is a declaration by Azizan alleging that he had been sodomized by the accused. It was drafted for him by Ummi and he had signed it. Exhibit P14A, B and C read as follows: B

P14A C

5 Ogos 1997
Yang Amat Berhormat
Dato' Seri Dr Mahathir Mohamed
Perdana Menteri Malaysia
Jabatan Perdana Menteri
Kuala Lumpur D

YAB,

PERIHAL SALAH LAKU TIMBALAN PERDANA MALAYSIA

Dengan segala hormatnya, merujuk kepada perkara di atas, saya Ummi Hafilda bte Ali ingin mengemukakan laporan khas mengenai perihal salah laku Timbalan Perdana Menteri. E

YAB, laporan ini dibuat berdasarkan maklumat dan bukti yang telah kami perolehi sepanjang tempoh penyiasatan.

Ianya dibuat bersama dengan persetujuan kami kelima-lima beradik, iaitu Norlia bte Ali, Intan Dawini bte Ali, Mohd Azman bin Ali, Mohamed Azwan bin Ali dan Ummi Hafilda bte Ali. F

Bersama-sama ini juga disertakan dengan lampiran khas mengenai maklumat lengkap sebagai pertimbangan untuk pihak YAB.

Segala perhatian, pertimbangan dan tindakan oleh YAB dalam menangani masalah ini sangatlah dihargai dan disanjung tinggi.

Bagi kami YAB adalah tokoh pemimpin terulung negara yang kami cukup kagumi dan hormati. G

Sekian, Terima kasih.

Yang benar,
tt H

P14B

LAPORAN SULIT I

PERIHAL SALAH LAKU TIMBALAN PERDANA MENTERI

(1) Merupakan seorang homosexual melalui hubungan sejenisnya dan salah seorang dari mangsa yang berani tampil ke hadapan ialah bekas pemandu

kepada beliau, iaitu Azizan bin Abu Bakar yang kini menjadi pemandu Mohamed Azmin bin Ali.

(2) Mempunyai hubungan sulit dengan Puan Shamsidar Taharin, iaitu isteri kepada setiausaha sulitnya sendiri, Mohamed Azmin bin Ali.

(3) Membuat fitnah yang mempunyai unsur jahat demi kepentingan politiknya melalui kenyataan tuduhan kepada Ummi Hafilda bte Ali (adik kepada Mohamed Azmin bin Ali) bahawa si gadis tergila-gilakannya melalui surat-surat cinta yang telah dihantar kepada beliau.

(4) Menganiaya setiausaha sulitnya sendiri melalui skandalnya bersama Puan Shamsidar Taharin tanpa pengetahuan si suami.

(5) Memberikan satu tamparan hebat, yakni penghinaan dan tekanan perasaan dari segi maruah, kepada seluruh keluarga Mohamed Azmin bin Ali.

(6) Menyalahgunakan kuasa demi menutup segala pembohongan dan kemungkaran yang telah dilakukan.

(7) Mempersendakan Islam dengan pembacaan khutbah oleh beliau di sana-sini demi memberikan gambaran imej tokoh 'Pak Sheikh' yang memperjuangkan agama.

(8) Menggugat kredibiliti kepimpinan UMNO yang menjadi tunjang negara melalui perbuatan keji, hina, aib dan rakus beliau tanpa memikirkan implikasinya kepada sahsiah pembangunan ummah dan negara.

SEBAB-SEBAB LAPORAN DIKEMUKAKAN

(1) Memohon budibicara YAB Perdana Menteri untuk menyiasat setiap laporan yang dikemukakan.

(2) Memohon perlindungan keselamatan bagi pihak penulis dan keluarga.

(3) Menegakkan kebenaran demi kepentingan parti dan negara.

(4) Mengalami tekanan emosi yang paling kritikal bagi seluruh ahli keluarga sejak kes ini diketahui.

(5) Memohon YAB menyelamatkan abang kami, iaitu Mohamed Azmin bin Ali, dari terus berkhidmat dengan orang yang telah menganiayanya, iaitu insan munafik yang bernama Anwar Ibrahim.

(6) Memohon hukuman yang setimpal sekiranya laporan yang diberikan adalah benar sebagai satu peringatan kepada pemimpin yang lain supaya tidak menyalahgunakan kuasa dengan kedudukan yang ada.

(7) Menyekat sama-sekali perbuatan mungkar di luar tabii manusia, iaitu hubungan sejenis, yang sememangnya dilaknati oleh Allah SWT.

LAPORAN LENGKAP PERIHAL SALAH LAKU

YAB yang saya sanjungi, kagumi dan hormati, dengan rasa tanggungjawab walaupun terlalu berat tangan saya untuk menulis demi menyelamatkan abang saya, iaitu Mohamed Azmin bin Ali, dari terus teraniaya, maka kami adik-beradik telah mengambil kata sepakat untuk memohon jasa baik, pertimbangan dan budibicara YAB menerima laporan untuk kebaikan semua pihak.

YAB, laporan ini tidak bermotifkan sesuatu sama ada politik mahupun peribadi tetapi ianya lebih kepada perjuangan menegakkan kebenaran.

YAB, kami mengesyaki sesuatu yang tidak kena berlaku kepada Puan Shamsidar di mana beliau sering menerima panggilan misteri dari seseorang untuk tempoh yang agak lama, sekurang-kurangnya setengah jam hingga kadangkala memakan masa satu setengah jam.

Kekerapan menerima panggilan telefon dalam keadaan yang mencurigakan telah menimbulkan syak wasangka kepada seluruh ahli keluarga termasuk kedua-dua ibubapa.

BAB PEMBONGKARAN RAHSIA OLEH 'ATON' (PEMBANTU RUMAH)

Akhirnya hinggalah pada satu hari, dengan kuasa Allah si-pembantu rumah yang bernama Aton (bekerja hampir lapan tahun dengan Azmin) telah membuka sedikit rahsia mengatakan bahawa Puan Shamsidar mempunyai seorang kekasih di kalangan orang atasan.

Bila ditanya kenapa beliau berkata begitu, Aton dengan rasa sedikit serba-salah tetapi penuh tanggungjawab mengatakan bahawa kekerapan panggilan telefon itu ialah dari kekasihnya.

Apabila ditanya siapakah gerangan si-lelaki, si-pembantu agak keberatan tetapi setelah diminta bekerjasama akhirnya beliau memberitahu saya bahawa waktu-waktu yang selalu dipanggil ialah 6.30 petang, 8.30 malam dan kadangkala lewat 12 tengah malam ketika si-suami sedang nyenyak tidur.

Beliau meminta saya mengangkat telefon pada waktu-waktu tersebut sekiranya ingin mengetahui siapakah gerangan lelaki itu.

Akhirnya pada 9 Jun 1997, tepat pada waktunya 6.30 petang, saya berada di rumah Azmin.

Apabila telefon berbunyi, kedengaran suara seorang tokoh pemimpin yang sangat-sangat saya kenali, iaitu Anwar Ibrahim, dengan nada rasa cinta dan menggoda. Tetapi apabila beliau terperasan bahawa saya bukanlah wanita yang dicarinya, maka beliau meletakkan telefon. Kebodohan beliau nampak jelas apabila dia memanggil semula dan inilah perbualan kami.

Anwar: I nak bercakap dengan Shida.

Ummi: Siapa ni? (Agak keras.)

Anwar: Anwar. (dengan nada yang agak perlahan.)

Ummi: Is it Dato' Seri?

Anwar: Ya, bercakap.

Ummi: Sorry, I didn't recognize your voice just now. (tujuan saya untuk memerangkap beliau bagi mempastikan beliau adalah pemanggil yang meletakkan telefon sebelum ini. Beliau tidak menafikan.)

Anwar: Hah ... tulah suara you seksi sangat. You have such a lovely voice. I dok ingat salah rumah, that's why I letak phone.

Ummi: Hah ... apahal?

Anwar: I nak tanya fasal Afifa (anak bongsu Azmin). Rindu kat dia.

Ummi: She's okay, alhamdullilah sihat.

Anwar: Tak apalah, thank you.

Apabila gagang telefon diletakkan, maka berdetak hati saya mengesahkan gerangan si-lelaki tersebut dengan pembantu rumah. Akhirnya si-pembantu

A rumah mengaku bahawa itulah gerangan si-lelaki yang sering memanggil setiap hari.

YAB, buat makluman, Puan Shamsidar sering mengatakan kepada kami bahawa Anwar Ibrahim itu adalah kekasihnya. Tetapi ketika itu, kami menganggap ianya sebagai satu gurauan atau mainan. Namun, kenyataan berbau syak-wasangka timbul seperti mengatakan bahawa Afifa anak B bongsunya adalah anak Anwar Ibrahim. Jauh disudut hati kami ingin menyiasat perkara ini hingga ke akar umbi.

BAB KEJUJURAN DAN KEIKHLASAN PEMANDU

Sekali lagi dengan kuasa Allah, akhirnya pemandu kereta Shamsidar Taharin, iaitu Azizan Abu Bakar, telah datang ke pejabat saya pada 19 Jun 1997 dengan C penuh rasa tanggungjawab untuk membongkar rahsia majikannya, Shamsidar bte Taharin.

Perbualan kami mengambil masa dua setengah jam.

Kisah berkisar perbuatan curang Shamsidar kepada Azmin untuk tempoh yang agak lama dengan memberi kami maklumat lengkap 'modus operandi' perbuatan keji mereka, yakni Anwar-Shamsidar di kondominium mewah, D Tivoli Villa, Bangsar.

BAB MODUS OPERANDI ANWAR — SHAMSIDAR — DATO' NALA

Pada kebiasaannya, si-pemandu Azizan akan menurunkan Shamsidar pada setiap kali pertemuan di Café Guana di Bangsar Shopping Complex dan kereta mewah Daimler WBV 37 yang dikatakan kepunyaan Dato' Nala E (Eksekutif Director Magnum Corp) akan datang bersama beliau untuk menjemputnya di Bangsar Shopping Complex dan seterusnya mereka akan menuju ke kondominium mewah di Trivoli Villa untuk tempoh dua-tiga jam. Waktunya ialah 5.30 petang dan pada kebiasaannya ialah pada hari Rabu.

Alasan yang sering diberikan oleh Anwar kepada polis pengiring adalah bahawa beliau ingin bermain tennis dengan Nala di Bukit Kiara. Polis F pengiring dilarang turut serta. Begitulah kejadian keji yang berlaku sekian lama untuk tempoh beberapa tahun tanpa pengetahuan Azmin.

Selalunya perbuatan mereka adalah dua-minggu atau sebulan sekali.

BAB BUKTI REKOD PERTEMUAN

YAB, si-pemandu Azizan ada merekodkan setiap pertemuan mereka di dalam G diari peribadinya dan sudi menyerahkan secara peribadi kepada YAB bagi tujuan siasatan, lebih-lebih lagi untuk perbandingan dengan rekod SB yang mencatatkan setiap kali urusan keluar-masuk Anwar dari kediaman rasmi.

BAB AZIZAN JADI MANGSA HOMOSEKS ANWAR

YAB, Azizan merupakan bekas pemandu peribadi kepada isteri Anwar, iaitu H Datin Seri Azizah untuk tempoh empat tahun.

Bagi beliau, dia tidak mempunyai sebarang motif untuk menjatuhkan Anwar tetapi lebih kepada perasaan peribadi kasihan dan sedih kepada majikannya Mohamed Azmin Ali yang baginya terlalu baik dan percaya kepada isteri dan ketua.

I Beliau telah menceritakan kepada saya bahawa tindakan beliau berhenti kerja dengan insan munafik bernama Anwar ialah kerana terasa tertekan, terlalu marah dan hina melalui pengakuan bersumpahnya yang dilampirkan.

Menurut Azizan, salah seorang lagi mangsa hubungan sejenisnya ialah Sukma yang dikenali umum sebagai adik angkat Anwar, iaitu rakyat Indonesia yang mempunyai butik bernama 'Ferre' di Hotel Hilton.

Kini Sukma sedang sakit misteri.

YAB, setelah mendapat maklumat terperinci dari pemandu yang bersih, cekap dan amanah, maka kami adik-beradik telah membuat keputusan untuk menyaksikan kejadian tersebut sebagai bukti.

BAB KEJADIAN 30 JUN 1997 JAM 5.35 PETANG (ISNIN)

Saya menerima panggilan telefon pada pukul 5 petang dari Azizan bahawa satu pertemuan antara mereka, yakni Anwar-Shamsidar di Bangsar Shopping Complex.

Ketika itu saya berada di Setapak dan dengan penuh rasa tanggungjawab bagi memastikan pengaduan Azizan adalah benar dan sahih, maka saya berkejar ke tempat kejadian iaitu di Bangsar Shopping Complex.

Dalam perjalanan, saya sempat menelefon abang sulung, Mohd Azman Ali untuk turut serta.

Bersama saya ialah rakan karib saya Puan Zamrah Lajis. Saya juga sempat menelefon seorang lagi rakan bernama Puan Normala untuk meminjam pelekat kereta Kondominium Trivoli Villa bagi tujuan masuk ke dalam Kondominium.

Dengan izin Allah, kami tiba tepat pada masanya di mana kereta Daimler WBV 37 sedang menanti. Mereka tidak perasan kehadiran kami.

Akhirnya Allah telah menunjukkan di depan mata kami Puan Shamsidar menaiki kereta tersebut menyusur ke Kondo Tivoli Villa Bangsar.

Kami mengekorinya dari belakang tanpa pengetahuan mereka.

Lima saksi pada kejadian tersebut ialah Ummi Hafilda Ali, Mohd Azman Ali, Puan Zamrah Lajis, Puan Normala dan Azizan Abu Bakar.

Mereka keluar dari Kondo Tivoli pada pukul 7.40 malam dan kereta Daimler menghantar semula Shamsidar ke Bangsar Shopping Complex di mana Azizan menanti di tempat yang sama.

Kami tidak keberatan memberikan laporan terperinci sekiranya diberikan peluang untuk bertemu secara peribadi dengan YAB yang cukup kami sanjungi.

Saya hampir-hampir gila bila mengenangkan seorang tokoh pemimpin yang begitu saya sanjungi, lebih-lebih lagi ketokohan beliau di bidang agama sangup melakukan perbuatan yang amat keji dan hina sebagai pemimpin negara.

Mujurlah abang saya, Mohd Azman, menenangkan keadaan di mana beliau mengatakan terlalu bahaya untuk kami mengambil tindakan apatah lagi ketika itu bapa kepimpinan yang amat kami sanjungi, iaitu Dato' Seri Dr Mahathir, tiada di dalam negara.

Seluruh keluarga terperanjat, sedih, tertekan, terhina oleh perbuatan keji insan munafik Anwar Ibrahim. Tetapi apakan daya, kami tiada kuasa kecuali meminta pandangan dari rakan-rakan yang saya percaya seperti Puan Sri Saadah dan Puan Norziela Jalil yang akhirnya memberikan saya satu semangat bagi membongkar pembohongan dan kemungkaran terbesar di muka bumi ini.

A YAB, kami tidak melaporkan kepada Mohamed Azmin kerana percaya bahawa kasih-sayang dan kesetiaannya terhadap isteri dan ketua tidak berbelah bagi. Kami juga khuatir beliau mungkin mengambil tindakan di luar jangkaan sekiranya berasa amat tertekan.

BAB UGUTAN POLIS

B YAB, pada 10 Julai 1997, saya bercakap di telefon dengan ADC Anwar iaitu Zul Aznam pada pukul 8.15 malam dengan memberi amaran secara halus supaya kisah ini ditutup dan tidak diceritakan kepada sesiapa sahaja termasuk kedua ibu bapa.

Beliau juga memberikan amaran kedudukan Anwar yang amat penting dalam negara. Saya menangis di telefon mengenangkan bahaya yang mungkin
C datang dan rasa tertekan yang amat sangat apabila abang saya yang terlalu baik dianiaya oleh ketua dan isterinya sendiri. Tolonglah kami YAB.

Selepas kejadian pengintipan, pelbagai tuduhan telah dilemparkan kepada saya untuk menutup segala kemungkarannya. Di antaranya ialah saya telah dituduh membuat fitnah melalui surat layang yang sampai kepada isterinya Datin Seri Azizah dan kakaknya Hajah Khadijah.

D Saya juga telah dituduh oleh insan munafik Anwar Ibrahim bahawa saya ini syok dekat dia (melalui perbualannya dengan Datuk Seri Megat Junid) pada 2 Ogos 1997 di mana beliau mengatakan saya Ummi Hafilda cuba menimbulkan angkara kerana cinta saya tidak berbalas untuk tempoh dua tahun.

Beliau seolah-olah melatah akan kesalahannya sendiri. Bagi saya, beliau
E terlalu bahaya apabila cuba menjerat saya dengan mengatakan surat-surat cinta saya ada di dalam simpanannya.

Sekali lagi, saya berasa amat tertekan dengan perbuatan khianatnya kerana demi Allah saya tidak pernah mempunyai perasaan cinta ke atasnya apatah lagi untuk menghantar surat cinta.

F Bagi saya, ini ialah satu pengkhianatan dan pembohongan yang tidak dapat diterima oleh akal semata-mata untuk memberikan gambaran bahawa saya adalah wanita murahan yang menagih cinta dari seorang Timbalan Perdana Menteri.

Kejahatannya itu tidak dapat saya maafkan di dunia dan akhirat, apatah lagi untuk menerima beliau sebagai pemimpin negara.

G YAB, saya khuatir sekiranya surat cinta yang tidak pernah wujud boleh direka, beliau mungkin berupaya menangkap saya dengan kedudukan dan kuasa yang ada di atas alasan-alasan lain terutamanya dari segi tuduhan palsu dan sebagainya.

Bantulah saya YAB.

H BAB ANWAR MENELEFON AZIZAN

Anwar ada menelefon Azizan pada 13 Julai 1997 setelah tersebarnya surat layang di mana beliau meminta Azizan memberi kerjasama untuk menafikan segala tuduhan sekiranya Azmin ingin bersemuka dengan beliau.

HARAPAN DAN BAHAN BUKTI

I (1) YAB, saya sempat mengambil gambar kereta Daimler WBV 37 ketika menuruni bukit di Kondo Trivoli Bangsar.

(2) Azizan, si-pemandu sedia memberikan diari peribadinya yang

mencatatkan setiap kali pertemuan mereka berdua bagi tujuan perbandingan rekod. A

(3) Kami menaruh segala harapan ke atas YAB untuk mengadakan siasatan terperinci ke atas 'balaci' utamanya, iaitu Dato' Nala yang sering menjadi pemandu Daimler WBV 37 bagi setiap kali pertemuan mereka.

(4) Memohon tindakan siasatan ke atas Shamsidar Taharin (perempuan simpanan Anwar Ibrahim). Buat makluman YAB, nombor telefon B tangannya (Shamsidar) ialah 019-3133287 dengan menggunakan nama Cheong Moew Yen dan telefon rumahnya 03-4052020.

(5) Memohon jasa-baik tindakan siasatan ke atas Sukma, adik angkatnya, yang juga pasangan homoseksualnya yang kini mengidap penyakit misteri. Beliau mendakwa sakit bila duduk dan berjalan dalam pertemuan saya dengannya baru-baru ini, iaitu pada 2 Ogos 1997. C

(6) Memohon perlindungan keselamatan dari YAB kerana saya khuatir nyawa saya terancam memandangkan sejak akhir-akhir ini perjalanan saya diekori oleh orang yang tidak dikenali.

(7) Saya juga memohon jasa baik YAB untuk merahsiakan laporan ini demi keselamatan kami sekeluarga. Hanya Allah dan YAB dapat membantu D kami menyelesaikan segala kemelut masalah yang terlalu kusut ini.

(8) Bersama ini juga disertakan butir-butir pemilik kenderaan bernombor WBV 37 yang dikeluarkan oleh Jabatan Pengangkutan Jalan.

PANDANGAN PERIBADI

YAB, bagi saya Anwar Ibrahim selaku Timbalan Perdana Menteri tidak layak E menyandang jawatan yang begitu penting dalam negara memandangkan sekiranya kuasa dan kedudukannya terus dikekalkan, kemungkinan besar pelbagai perkara yang lebih hina dan menakutkan mungkin berlaku.

Jadi, sebelum wabak penyakit pemimpin yang menipu rakyat jelata dengan bertopengkan isu agama kononnya Islam yang Addin dan Nahi Mungkar haruslah ditamatkan dengan segera demi keselamatan dan maruah F bangsa.

Beliau bolehlah diibaratkan musuh dalam selimut yang paling merbahaya melalui perilakunya mengatakan kononnya Azmin itu seperti adik sendiri dan dalam masa yang sama beliau tergamak mengadakan hubungan sulit dengan isteri Azmin.

Beliau memang seorang pelakon handalan, pelakon terhebat dekad era G 90-an. Lakonannya mengkagumkan, memukau setiap mata yang menontonnya, strateginya kemas, perjalanannya licin tetapi beliau lupa bahawa Allah Maha Berkuasa atas segala-galanya.

Akhirnya doa-doa kami insan-insan teraniaya dimakbulkan oleh Allah. Kami bersyukur kepada Ilahi yang telah memberikan jawapan kepada setiap dari kami dan inilah hasilnya laporan dikemukakan untuk tindakan susulan H oleh YAB.

Segala pertolongan, pertimbangan dan kerjasama serta kasih-sayang YAB sebagai seorang Bapa Kepimpinan sangatlah dihargai dan disanjung tinggi.

DIALOG-DIALOG YANG MENIMBULKAN SYAK-WASANGKA I

Dialog 1

Dalam satu perbualan Shamsidar dengan pembantu rumahnya.

A

Shamsidar: Kesian Afifa, orang jumpa papa (Anwar) hari-hari tapi Fifa jumpa bapa sebulan sekali.

Aton: Kalau dah tahu jumpa papa sebulan sekali, kahwinlah dengan papa.

Shamsidar: Itulah yang susah ni, papa sana tua, abah sini (Azmin) muda, pening kepala.

B

Dialog II

Apabila membuat panggilan telefon, Anwar akan sering berkata seperti ini melalui pembantu rumah.

Anwar: Ton, Datin Seri ada (Shamsidar).

C

Dialog III

Percakapan yang sering terjadi antara anak perempuan Azmin yang sulung, Liyana (7 tahun) dengan anak keduanya Shazrin (5 tahun).

Shazrin: Maklong, jangan cubit Fifa. Mummy kata dia anak Menteri. Anak uncle Anwar.

Norlia: Ayen, mummy ada boyfriend tak?

D

(Kakak Azmin)

Shazrin: Ada.

Norlia: Siapa boyfriend mummy?

Shazrin: Uncle Anwar.

Norlia: Kenapa Ayen tak cakap abah, mummy ada boyfriend Uncle Anwar?

E

Shazrin: Mummy kata nanti abah lepuk (pukul).

Norlia: Nana, siapa boyfriend mummy?

Liyana: Uncle Anwar.

Norlia: Mana Nana tahu?

F

Liyana: Alah maklong ni, mummy kan cakap pelan-pelan, lama-lama dengan Uncle Anwar, mestilah boyfriend dia.

Dialog IV

Melalui perbualan Shamsidar dan Ummi.

Shamsidar: Cantik tak handbag I?

G

Ummi: Bolehlah.

Shamsidar: You nak tahu siapa bagi?

Ummi: Siapa dia?

Shamsidar: Boyfriend I.

Ummi: Siapa boyfriend you?

H

Shamsidar: Ha! .... Anwar Ibrahim lah.

Ini adalah antara sebahagian dialog yang tidak sedap didengar dan telah menimbulkan syak wasangka kepada kami seluruh keluarga sehingga membawa kepada penyiasatan kes.

I

P14C

Dengan nama Allah Yang Maha Pemurah Lagi Maha Pengasih, saya Azizan bin Abu Bakar (IC 5980324) dengan ini membuat pengakuan bersumpah

bahawa saya telah menjadi mangsa hubungan sejenis (yakni homoseksual) dengan Anwar bin Ibrahim yang kini memangku jawatan Timbalan Perdana Menteri.

Perbuatan terkutuk ini telah dilakukan untuk beberapa kali sekitar tahun 1992 tanpa kerelaan saya. Ianya kerap berlaku di hotel-hotel mewah seperti PJ Hilton, Hyatt Saujana dan Holiday Villa tanpa pengetahuan umum dan isterinya.

Buat makluman, saya merupakan bekas pemandu peribadi kepada isterinya, iaitu Datin Seri Wan Azizah.

Sepanjang bekerja di bawah naungan beliau, Anwar, saya sering dipanggil untuk melakukan perkara terkutuk itu walaupun untuk beberapa kali saya cuba menolaknya. Sifat rakusnya membayangkan beliau seorang yang boleh dikategorikan sebagai 'kronik' sehingga membuatkan jiwa dan mental saya begitu tertekan.

Perasaan bersalah akhirnya menguasai diri saya apabila setiap kali terpandang wajah Datin Seri Wan Azizah yang begitu tinggi akhlaknya.

Akhirnya saya telah membuat keputusan untuk berhenti dari terus menjadi hamba homoseksual kepada manusia yang saya kategorikan bersifat binatang iaitu Anwar bin Ibrahim.

Sekali lagi dengan nama Allah Yang Maha Mengetahui akan segala-galanya, saya bersumpah membuat pengakuan ini tanpa mempunyai niat atau motif tertentu sama ada secara peribadi mahupun politik untuk menjatuhkannya.

Pengakuan ini dibuat berdasarkan kesedaran dan keinginan menegakkan kebenaran demi menyelamatkan insan-insan yang teraniaya seperti saya.

Saya tidak keberatan untuk dipanggil bagi menjelaskan kedudukan dengan lebih terperinci.

Akhir sekali saya berharap pihak yang bertanggungjawab dapat mengambil kira pandangan ini secara serius supaya pemimpin ini diberikan hukuman yang setimpal demi kebaikan dan pengajaran kepada pemimpin lain.

Dengan nama Allah, sekali lagi saya Azizan bin Abu Bakar bersumpah bahawa segala laporan di atas dibuat dengan kerelaan hati saya tanpa desakan, tuntutan dan tekanan dari pihak-pihak tertentu. Segala-galanya adalah benar demi menyelamatkan bangsa dan negara. Amin.

Pengakuan bersumpah:

Oleh: tt
I/C: 5980324
Alamat: 54, Jalan Bersatu 1
Taman Bersatu, 48000 Rawang
Tarikh: 5 Ogos 1997

On 8 August 1997, Dato Amir Junus met the Inspector General of Police ('the IGP') who gave him some particulars about exh P14A, B and C and instructed him to ascertain how far the letter had been circulated and to find out the background of its writers, Ummi and Azizan. On 9 August 1997, Dato Amir Junus passed the instruction to ACP Mazlan. On 10 August 1997, Dato Amir Junus and ACP Mazlan met Dato Mohd Said at the Subang International Airport to brief him, inter alia, on the letter. He asked them to prepare a detailed report on it. On 11 August 1997 at about 7.30

A am, they met Dato Mohd Said and briefed him again on the letter. He asked them to brief the IGP. When they briefed the IGP, he gave them a copy of exh P14A, B and C and asked them to monitor the situation. On the same day, Dato Mohd Said bin Awang met the accused at his office at about 9 am to brief him on some official matters. Immediately after the briefing, the accused asked Dato Mohd Said to see him alone. The accused told him B about a letter containing wild allegations against him and requested Dato Mohd Said to look into the matter.

On 12 August 1997, Dato Mohd Said called for Dato Amir Junus and ACP Mazlan. They briefed him on exh P14A, B and C and showed him the letter. Later, they briefed the IGP about it. They told him that exh P14A, B C and C had not been widely circulated yet and that Ummi was in the process of sending it to YAB Prime Minister. The IGP instructed them to conduct further inquiries into it. On the same day at about 8 pm, Dato Amir Junus was informed by ASP Zull Aznam that the accused would like to meet him and Dato Mohd Said at his Official Residence at No 47, Jalan Damansara at 10 pm. Dato Amir Junus informed Dato Mohd Said about this and they D went to the accused's Official Residence as requested. Upon arrival there, they were ushered into the library. After some conversation, the accused talked to them about Ummi and her problems with her family. He then asked them about exh P14A, B and C and asked them whether they had received a copy of it. He told them that it was written by Ummi. They E informed him that they had been given a copy of it by the IGP. He asked them to trace Ummi and Azizan in order to find out more about the letter and why it was written. Dato Mohd Said told the accused that they will look into the matter. Dato Amir Junus made a note of this meeting in exh P42 to which I shall refer shortly.

F On the morning of 13 August 1997, Dato Mohd Said called Dato Amir Junus and ACP Mazlan to his office. They reviewed the latest intelligence on exh P14A, B and C. Dato Mohd Said directed them to try and monitor Ummi and Azizan from their sources. Later in the day, Dato Amir Junus was informed by ASP Zull Aznam that the accused wanted to see him and Dato Mohd Said at his Official Residence at 10 pm. Dato Amir Junus passed the G information to Dato Mohd Said and they met the accused in the library of his Official Residence at the appointed time. The discussion was on the latest development on exh P14A, B and C. They informed him that the letter had been given to the IGP by Dato Seri Megat Junid. They also informed him that they had not been able to trace Ummi and Azizan yet. He urged them to locate Ummi and Azizan immediately and interview H them. He asked them to 'gempar' the two persons. Dato Mohd Said said that he understood the word to mean '... to surprise them and to put fear in them ...' because of the letter. Dato Amir Junus said that it meant to interview them and frighten them so that they will not spread the allegations in exh P14A, B and C. Dato Amir Junus made a note of the meeting. It is I exh P42 and reads as follows:

RAHSIA BESAR/CICERO

Nota Fail

Bilangan LF/T PCK II (C) Tarikh: 14 Ogos 1997

PERJUMPAAN DENGAN YAB DATO SERI ANWAR IBRAHIM, TIMBALAN PERDANA MENTERI

Pada 12 Ogos 1997, saya telah menerima panggilan telefon dari ASP Zull Aznam yang menyampaikan pesan bahawa Tim Perdana Menteri ingin berjumpa dengan Pengarah Cawangan Khas (PCK) di kediaman beliau pada malam hari itu.

(2) Dato' PCK bersama-sama saya telah hadir di kediaman T/PM di antara jam 2200 hingga jam 2300. Semasa pertemuan ini, perkara-perkara berikut telah dibincangkan:

2.1 Kandungan surat 19 mukasurat bertajuk 'Perihal Salahlaku Timbalan Perdana Menteri' yang dialamatkan kepada YAB Perdana Menteri bertarikh 5 Ogos 1997 dan ditandatangani oleh Ummi Hafilda Mohd Ali serta surat pengakuan Azizan Abu Bakar bertarikh 5 Ogos 1997; dan

2.2 T/PM mengarahkan pihak Cawangan Khas supaya mengesan Ummi Hafilda dan Azizan serta mencungkil maklumat untuk mengetahui tujuan dan matlamat mereka berbuat demikian.

(3) Ekoran dari pertemuan ini, saya dan Dato' PCK telah sekali lagi pergi ke kediaman T/PM pada 13 Ogos 1997 di antara jam 2100 hingga 2300. Pada kali ini, perbincangan adalah berkisar kepada usaha-usaha Cawangan Khas untuk mengesan Ummi Hafilda dan Azizan.

(4) T/PM pula mendesak supaya mereka dikesan dengan segera untuk ditemuduga.

tt
(Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO

On 15 August 1997, Dato Mohd Said had a meeting in his office with Dato Amir Junus and ACP Mazlan. ACP Mazlan told him that they still could not trace Ummi and Azizan. Dato Mohd Said told ACP Mazlan about the request of the accused and the need to locate them quickly. At the meeting, they also discussed an anonymous letter entitled 'Talqin Terbuka' (exh P15) which had been discovered by them. It was already in circulation. The contents of this letter were the same as that of exh P14B and C. At that time, ASP Zull Aznam telephoned Dato Amir Junus to inform him that the accused wanted to meet him and Dato Mohd Said in the afternoon at his Official Residence. They met the accused at 2 pm as requested. They talked about exh P14A, B and C. They mentioned exh P15 to him and the fact that it was in circulation. The accused showed them a copy of exh P15 and asked them to investigate fully into it. Dato Mohd Said said that the accused did not believe that exh P15 was written by the organizations named on it. Since the contents of exh P15 and exh P14A, B and C were the same, the three of them felt that exh P15 could have been written by the same group, including Ummi and Azizan. Dato

Mohd Said and Dato Amir Junus suggested to the accused that a police report be made on it. He did not want to make a report as he did not want the case to be investigated by the CID and because of the adverse publicity as he is a politician and Deputy Prime Minister. Dato Mohd Said and Dato Amir Junus then managed to convince him that it is better to make a police report. Dato Mohd Said said that he would find a good officer to investigate the case and mentioned the name of SAC Musa as an appropriate officer to do so. The accused then agreed to lodge a report but told them that even though the case was going to be investigated by the CID, he did not want the matter to go to court as, in that event, it would be publicized. The accused said that the report will be lodged on his behalf by ASP Zull Aznam. Dato Amir Junus made a note of this meeting in exh P43 to which I shall refer shortly. At about 3 pm on the same day ASP Zull Aznam lodged the report (exh P16) at the office of Dato Mohd Said who passed the report to SAC Musa of the CID together with exh P15. At about 3.45 pm, ACP Mazlan came to the office of Dato Mohd Said. He gave the latest briefing on the circulation of exh P15 and also informed Dato Mohd Said that he still could not trace Ummi and Azizan yet. Dato Mohd Said then planned with SAC Mazlan and SAC Musa on the division of work in the investigation. It was decided that the Special Branch shall look for Ummi and Azizan. Once they are traced, SAC Musa and ASP Zulkifli will arrest them. Upon their arrest, the Special Branch was to interview them first. Dato Mohd Said said that in order to comply with the instructions of the accused, they have to arrest Ummi and Azizan.

On 16 August 1997 at about 9.30 am, Dato Mohd Said met Dato Amir and ACP Mazlan in his office. ACP Mazlan said that Ummi and Azizan could not be traced yet. Later upon being informed by ASP Zull Aznam, they met the accused at his Official Residence at 10 pm. He told them that if they managed to arrest Ummi and Azizan, he did not want them to be detained for long. He wanted them to be questioned deeply as to why they wrote the letter. Dato Mohd Said told the accused that they had still not been traced yet. The accused repeated his request that he wanted the two to be traced as early as possible. Exhibit P43 is a note of the meeting kept by Dato Amir Junus. It reads as follows:

RAHSIA BESAR/CICERO

Nota Fail

Bilangan LF/T PCK II (C) Tarikh: 18 Ogos 1997

PERJUMPAAN DENGAN YAB TIMBALAN PERDANA MENTERI

Pada petang 15 Ogos 1997, Dato' Pengarah Cawangan Khas (PCK) dan saya telah dipanggil pergi ke kediaman YAB Dato' Seri Anwar Ibrahim di mana beliau telah memaklumkan tentang penyebaran risalah bertajuk 'Talqin Terbuka Untuk Anwar Ibrahim'. Dalam hubungan ini, beliau telah juga menggesa pihak Cawangan Khas supaya segera menyiasat siapa yang bertanggungjawab menulis dan menyebar surat layang tersebut.

(2) Dato' Seri Anwar telah dinasihatkan oleh Dato' PCK supaya membuat laporan polis agar satu penyiasatan boleh dijalankan. Ini adalah kerana dengan adanya laporan polis yang formal, satu penyiasatan yang lebih menyeluruh boleh dimulakan.

(3) Di atas nasihat ini, ASP Zull Aznam telah datang ke pejabat PCK pada hari yang sama jam lebih kurang 1600 untuk membuat laporan polis. Laporan ini telah diserahkan kepada pihak Jabatan Siasatan Jenayah.

Pada masa yang sama, Dato' PCK telah mengarahkan ACP Mazlan Mohd Din untuk mengesan Ummi Hafilda dan Azizan Abu Bakar.

(4) Pada 16 Ogos 1997, Dato' PCK dan saya telah juga pergi ke kediaman Dato' Seri Anwar di antara jam 2130 hingga 2330 setelah dipanggil oleh beliau. Semasa pertemuan ini, Dato' Seri Anwar telah meminta supaya beliau ditaklimatkan tentang perkembangan siasatan terhadap penyibaran surat layang 'Talqin ...'.

tt
(Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO

On 17 August 1997 at about 2 pm ACP Mazlan asked SAC Musa to prepare a stand-by team from the CID as the Special Branch may be locating Ummi and Azizan on that day. On the same day, ACP Mazlan informed SAC Musa that he was at the house of Dr Restina at No 56, Jalan Medang Tandok, Bangsar, where Ummi and Azizan were known to be and that he faced problems in entering into the house as Dr Restina was not co-operative. SAC Musa arrived at the house at about 9 pm and was informed that Dr Restina, her children, her domestic maid, Ummi and Azizan were in the master bedroom which was locked from inside. SAC Musa then communicated with Dr Restina. Initially, Dr Restina refused to open the door of the bedroom as she did not believe that the persons outside were police personnel. Dr Restina, after having confirmed with Tan Sri Norian Mai, the Deputy IGP, that the persons in her house were indeed police officers, agreed to come out of the master bedroom. As the door to the room could not be opened, Dr Restina and the others came out from the room through the balcony. Ummi and Azizan were arrested at about 11 pm by the CID and handed over to DSP Aziz. They were then taken to Bukit Aman.

In the meanwhile on 17 August 1997, the IGP had instructed Dato Mohd Said and Dato Amir Junus to see him in his house at about 8 pm. The IGP told them that Dr Restina had telephoned him at his house to inform him that there were police officers in her house compound. They told the IGP that Ummi and Azizan were in her house and the police were there to arrest them. While they were there, ACP Mazlan telephoned Dato Mohd Said at about 11 pm and told him that Ummi and Azizan had been arrested and had been brought to Bukit Aman. Dato Mohd Said informed the IGP about the arrest. At that time, Dato Amir Junus received a call on his handphone from the accused. He informed the accused that Ummi and Azizan had been arrested. The accused wanted to speak to the IGP. Dato Amir Junus then handed the handphone to the IGP who spoke to the accused. The IGP then informed them that the accused wanted to see them. They reached the accused's Official Residence at about 12.30 am. They briefed him about the arrest of Ummi and Azizan. The accused directed them that Ummi and Azizan were to retract and deny their allegations as contained in exh P14A, B and C in writing within 24 hours. The accused repeated that he did not want the two to be detained for long and that their

A case should not be brought to court. He also wanted them to ensure that there is no publicity. In confirming this, Dato Amir Junus said that the accused wanted the retraction letters to be addressed to YAB Prime Minister. Dato Amir Junus kept a note of this meeting. It is exh P44 and reads as follows:

B RAHSIA BESAR/CICERO

Nota Fail

Bilangan LF/T PCK (C) Tarikh: 18 Ogos 1997

PENANGKAPAN UMMI HAFILDA DAN AZIZAN ABU BAKAR

Kedua-dua tajuk telah ditangkap pada malam 17 Ogos 1997 oleh pihak
C Jabatan Siasatan Jenayah. Memandangkan Dato' Seri Anwar Ibrahim ingin mengetahui perkembangan kes ini, maka Dato' PCK dan saya telah diminta pergi ke kediaman beliau pada 18 Ogos 1997 di antara jam 0030 hingga jam 0100.

(2) Di dalam pertemuan ini, Dato' Seri Anwar telah dimaklumkan tentang rentetan penangkapan kedua-dua tajuk berkenaan. Dato' Seri Anwar
D kemudiannya telah memberi arahan-arahan berikut:

2.1. Kedua-dua tajuk tidak ditahan lama-lama;

2.2. Mereka hendaklah ditemuduga supaya mereka takut dan menafikan tohmahan-tohmahan berkenaan;

2.3. Tidak mahu kes ini dibawa ke mahkamah.

E tt
(Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO

F Dato Mohd Said and Dato Amir Junus then went back to their office at about 1.30 am. Dato Mohd Said then called for ACP Mazlan and DSP Aziz. ACP Mazlan told them that Ummi and Azizan had been placed in different rooms and were being interviewed. Dato Mohd, bearing in mind the directions given by the accused, told the officers that looking at the political
G and economic climate, they cannot afford to have any instability with regard to security. Thus he told them, again bearing in mind the directions given by the accused, that they have less than 24 hours to get a retraction of the allegations from Ummi and Azizan. He instructed ACP Mazlan to interview Azizan and DSP Aziz to interview Ummi. Dato Mohd Said said that the interrogation to obtain a retraction is known within the Special Branch as a
H 'Turning Over Operation'. The objective of turning over a person is to change his stand and neutralize him. Dato Amir Junus said that the instruction given to ACP Mazlan and DSP Aziz to make Ummi and Azizan retract their allegations is contrary to the practice of the Special Branch and that that was the first time the technique was applied outside their normal routine. He also said that contrary to the normal practice of turning over,
I which is to obtain the truth of a matter, the instruction given to the interrogators was not to extract the truth from Ummi and Azizan but only to neutralize them. Dato Amir Junus also said that the instructions given by

the accused to him and Dato Mohd Said were similar to the instructions they gave to ACP Mazlan and DSP Aziz. ACP Mazlan said that he was compelled to carry out the instructions even though it was strange. DSP Aziz said that what he was asked to do was very odd and outside his normal duties.

DSP Aziz said that the instructions he received from Dato Amir Junus meant that he had to change the stand of Ummi and Azizan so that they will withdraw all the allegations as contained in exh P14A, B and C. He was instructed to concentrate on Ummi while ACP Mazlan was to concentrate on Azizan. DSP Aziz said that Ummi was interrogated non-stop from 11 pm on 17 August 1997 till 7 am on 18 August 1997. He said that fear was created in her by threats of detention under the Internal Security Act ('the ISA') and the Sedition Act and probable retaliation by the accused. She was mentally tortured until she lost her will to fight and surrendered to the interrogation team. Ummi said that she was not allowed to sleep during the period of interrogation. She said that she was threatened with detention under the ISA and in the lockup with drug addicts and prostitutes. She then wrote a letter of apology addressed to YAB Prime Minister. ACP Mazlan said that the persuasive method of interrogation used on Azizan was not effective. Azizan was then interrogated by DSP Aziz for about an hour from 5 am on 18 August 1997. He threatened Azizan and managed to neutralize him by 6 am. Azizan said he was also threatened with detention under the ISA. He was not allowed to rest during the period of detention and was questioned continuously. Finally he agreed to write the letter of apology. He said that it was not written voluntarily.

Prior to that at about 2.30 am on 18 August 1997, ACP Mazlan and DSP Aziz met Dato Amir Junus and Dato Mohd Said at the latter's office. DSP Aziz told them that it would be a bit difficult to deal with Ummi as she was still very strong in her original stand. ACP Mazlan said that it would be easier to deal with Azizan. Dato Amir Junus and Dato Mohd Said still directed them to try again to neutralizneutralizee Ummi and Azizan to make them change their stand. Dato Mohd Said said that he took this stand as the direction that he had received was from the Deputy Prime Minister. Dato Amir Junus said that it was done in order to comply with the request of the accused.

At about noon on the same day, Dato Mohd Said and Dato Amir Junus were called by the accused to his Official Residence. They told him that Ummi and Azizan had changed their mind and were willing to retract the allegations. He told them that Ummi and Azizan should write a letter of denial to YAB Prime Minister. Dato Amir Junus kept a note of the meeting. It is exh P45 and reads as follows:

RAHSIA BESAR/CICERO

Nota Fail

Bilangan LF/T PCK II (C) Tarikh: 18 Ogos 1997

PENANGKAPAN UMMI HAFILDA DAN AZIZAN ABU BAKAR

Pada 18 Ogos 1997 jam 1215, Dato' PCK dan saya telah pergi ke kediaman Dato' Seri Anwar Ibrahim apabila beliau mengarahkan supaya ditaklimatkan tentang perkembangan tangkapan Ummi Hafilda dan Azizan Abu Bakar.

(2) Di dalam pertemuan ini, Dato' Seri Anwar telah mengarahkan supaya sesuatu tindakan diambil bagi menentukan kedua-dua mereka menarik semula kesemua tohmahan yang dibuat terhadap beliau.

tt
(Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO

At about 4.30 pm, Dato Mohd Said informed ACP Mazlan and DSP Aziz that Ummi and Azizan should address the written statement to YAB Prime Minister. They carried out the instruction. At about 6 pm, DSP Aziz handed to Dato Mohd Said the first draft of Ummi's written statement with which he was not satisfied as it was not clear. So he asked DSP Aziz to get a more committed letter from Ummi which he did. At about 9.30 pm, Dato Mohd Said received the letters written by Ummi and Azizan. The letter from Azizan is exh P17 and the letter from Ummi is exh P18. Exhibit P17 reads as follows:

Azizan bin Abu Bakar
54, Jln Bersatu 1
Tmn Bersatu
48000, Rawang, Selangor Tarikh: 18 Ogos 1997

Kepada

YAB Dato' Seri Dr Mahathir Mohammad
Perdana Menteri Malaysia

As'salamualaikum Dato' Seri

Dengan segala hormatnya saya seperti nama di atas ingin memaklumkan kepada YAB Dato' Seri bahawasanya saya ialah orang yang bertanggungjawab berkenaan surat pengakuan bersumpah yang tercatit nama, No Kad Pengenalan dan ditandatagani oleh saya sendiri.

Saya mengaku telah membuat pengakuan bersumpah itu kerana mengikut nafsu, emosi dan fikiran semata-mata kerana melayani perasaan tanpa memikirkan musibatnya.

Puncanya saya bertindak sedemikian adalah kerana bersimpati terhadap keluarga Encik Azmin Haji Ali yang telah bertanya kepada saya adakah Puan Shamsidar mempunyai hubungan sulit dengan YAB Dato' Seri Anwar Ibrahim. Ahli keluarga yang bertanya ialah Cik Ummi Hafilda, memandangkan saya adalah bekas pemandu peribadi kepada Datin Seri Wan Azizah. Saya mengesahkan pertanyaan Cik Ummi berdasarkan pandangan saya terhadap tingkah laku dan perbualan Puan Shamsidar dengan YAB Dato' Seri Anwar Ibrahim. Ini disebabkan saya adalah pemandu peribadi kepada Puan Shamsidar dan tidak suka dengan perangainya yang suka memerintah.

Apabila Cik Ummi menyediakan surat pengakuan bersumpah berbau fitnah berpandukan percakapan saya tentang perhubungan saya dengan YAB Dato' Seri Anwar Ibrahim dan meminta saya untuk menulis nama dan No kad pengenalan, saya telah melakukannya tanpa berfikir panjang.

Selain daripada itu, dengan keyakinan dan jaminan yang diberikan oleh rakan-rakan Cik Umi iaitu Dr Restina, Mohamad Taib dan rakan Mohamad Taib bernama 'Tan', saya merasakan ketika itu tindakan saya ini adalah betul dan tidak perlu dikhuatirkan. Lebih-lebih lagi apabila diberitahu oleh Mohamad Taib bahawa saya tidak perlu takut kerana perkara ini telah disampaikan kepada Dato Aziz Shamsudin yang memberitahu akan memajukan surat berkenaan kepada YAB Perdana Menteri. Saya juga diberitahu oleh Mohamad Taib bahawa beliau adalah seorang pegawai cawangan khas dan rakan rapat kepada Dato Aziz.

YAB Dato' Seri, saya sedar kini akan kesilapan bahawa surat bersumpah berkenaan sememangnya tidak berasas kerana tidak terdapat sebarang bukti atau fakta sokongan dakwaan saya itu.

Saya mengakui bahawa tindakan saya itu boleh disifatkan sebagai fitnah yang saya sedar di sisi agama adalah satu dosa besar.

Dengan itu, saya memohon jutaan ampun dan maaf kepada YAB Perdana Menteri dan Dato' Seri Anwar Ibrahim di atas kesalahan saya itu.

Pengakuan terhadap kesalahan saya ini dilakukan oleh diri saya sendiri tanpa dorongan mana-mana pihak dan ianya adalah menjelaskan kedudukan sebenar.

Yang benar
tt
(Azizan Abu Bakar)
No K/P 5980324

sk: YAB Dato' Seri Anwar Ibrahim
Timbalan Perdana Menteri

Exhibit P18 reads as follows:

18 Ogos 1997

Yang Amat Berhormat
Dato' Seri Dr Mahathir Mohamed
Perdana Menteri Malaysia
Jabatan Perdana Menteri
Kuala Lumpur

PENGAKUAN OLEH UMMI HAFILDA BTE ALI BERKAITAN PERIHAL SALAHLAKU TIMBALAN PERDANA MENTERI

Dengan segala hormatnya, merujuk kepada perkara di atas, saya dengan ini ingin mengemukakan penjelasan maklumat mengenai laporan sulit yang telah dihantar kepada YAB Perdana Menteri pada 5 Ogos 1997.

Untuk makluman YAB, tujuan saya mengemukakan laporan berkenaan adalah semata-mata untuk mendapatkan pertimbangan dan perhatian dari YAB terhadap salah laku Timbalan Perdana Menteri iaitu Dato' Seri Anwar Ibrahim, yang saya percayai mempunyai hubungan sulit dengan Puan Shamsidar bte Taharin iaitu isteri kepada (sic) Mohd Azmin Ali yang

merupakan abang kandung saya. Selain daripada itu, saya juga percaya bahawa YB Anwar Ibrahim pernah mengadakan hubungan homoseksual dengan bekas pemandunya bernama Azizan Abu Bakar.

Pendirian dan pandangan saya pada ketika itu banyak berdasarkan kepada maklumat-maklumat yang saya perolehi melalui perbuatan Shamsidar yang sering menjawab telefon secara berahsia dalam tempoh jangka masa panjang, setiap kali saya mengunjungi rumahnya. Pandangan ini diperkukuhkan dengan maklumat yang didedahkan oleh orang gaji Shamsidar iaitu Aton bahawa sememangnya beliau disyaki mempunyai hubungan sulit dengan orang kenamaan.

Melalui penyiasatan ringkas yang saya lakukan sendiri, saya berasa yakin bahawa pemanggil itu adalah YB Anwar bin Ibrahim. Selain daripada itu, saya juga difahamkan oleh pemandu kepada Shamsidar, iaitu Azizan, bahawa beliau sering dikehendaki menghantar Shamsidar ke Bangsar sebelum dijemput dengan sebuah kereta lain ke Tivolli Villa Bangsar.

Ke arah ini, saya telah menjalankan penyiasatan sendiri pada 30 Jun 1997 yang membuktikan bahawa Shamsidar telah dibawa dengan menaiki sebuah kereta mewah Daimler dengan nombor pendaftaran WBV 37 ke kawasan Tivolli Villa berkenaan, bagi menemui seorang kenamaan iaitu YB Anwar bin Ibrahim. Inilah perkara yang menyebabkan saya percaya mereka mengadakan hubungan sulit.

Ekoran itu, saya telah merujuk perkara ini pada kenalan baik saya iaitu Puan Ziela Jalil dan Dr Restina Majid, untuk mendapatkan pandangan bagi membetulkan keadaan melalui kewibawaan Perdana Menteri sebagai orang yang paling dihormati oleh kedua-dua pihak. Untuk menjayakan ini, Puan Ziela telah memaklumkan perkara berkenaan kepada Dato Seri Megat Junid dan seterusnya meminta saya membuat laporan dalam bentuk hitam putih agar dirinya tidak disalahertikan sebagai punca yang berlaku.

Ekoran ini, Dato Megat Junid telah merujuk perkara ini kepada Tun Daim Zainuddin selaku orang paling rapat dengan Perdana Menteri. Sehubungan dengan itu, berlaku pertemuan di antara saya, Ziela dan Tun Daim pada awal Ogos 1997 bertempat di pejabat Tun Daim Zainuddin. Di dalam pertemuan itu, beliau telah menasihatkan agar laporan dibuat dalam bentuk hitam putih sebelum diajukan kepada Perdana Menteri. Pada masa yang sama, perkara ini telah dirujuk kepada Dr Restina Majid yang kemudiannya telah menguruskan pertemuan dengan rakannya iaitu Dato Aziz Shamsudin yang memegang jawatan selaku setiausaha politik kepada Perdana Menteri pada awal Ogos 1997.

Sehubungan dengan itu, Dato Aziz Shamsudin telah ~~mengaturkan~~ menemukan saya dengan dua orang pegawai yang mendakwa bahawa mereka adalah dari unit cawangan khas JPM iaitu En Taib yang telah dibuang kerja pada 1993 dan En Tan yang tidak diketahui identitinya yang sebenar. Dalam pertemuan itu, percakapan saya telah dirakamkan menggunakan rakaman percakapan suara.

Di waktu itu, saya difahamkan ianya akan diserahkan kepada Perdana Menteri secepat mungkin. Dalam perjumpaan ini, saya juga menyatakan kerisauan kerana khuatir keselamatan diri saya terancam.

Sehubungan itu, mereka menjanjikan perlindungan keselamatan terhadap diri saya dan juga diri Azizan. Sebelum itu, En Taib yang kononnya dari cawangan khas, menasihatkan kami agar mengatakan kami di luar negara sekiranya mendapat panggilan telefon.

Walau bagaimanapun, semasa dalam siasatan polis ekoran dari laporan yang diajukan serta melalui sessi perbincangan yang diadakan, saya mendapati bahawa segala perkara yang berbangkit itu banyak bergantung kepada fakta-fakta yang tidak lengkap di mana kebanyakan pandangan tersebut hanya berdasarkan anggapan dan andaian yang tidak dapat dibawa ke tengah bagi membuktikan kesahihan (sic) pandangan saya ketika itu.

Cara penghantaran surat mungkin salah di mana telah melalui beberapa proses orang tengah yang kini diragui kejujurannya. Mungkin ini berdasarkan kepentingan peribadi atau politik oleh seseorang.

Bukti yang nyata di mana dua orang yang tidak dikenali telah menyamar sebagai unit cawangan khas dari pihak Perdana Menteri.

YAB, mengenai dakwaan yang dikemukakan oleh Azizan adalah sebagai pihak yang tolong menyampaikan mesej kepada Perdana Menteri dan terpulanglah oleh pihak berkuasa meneruskan penyiasatan.

YAB, saya juga berniat menjernihkan suasana yang keruh dan tegang ketika ini dengan cuba mendapatkan semula salinan-salinan yang masih ada di dalam simpanan rakan-rakan dalam usaha untuk menamatkan penyebaran dari terus berleluasa.

YAB, sebagai salah seorang dari ahli keluarga yang terlibat dalam kemelut masalah ini ingin meminta jasa baik dan budi bicara YAB bagi menjernihkan suasana kekeruhan kerana di pihak yang satu lagi menganggap ianya sebagai satu motif penganiayaan sedangkan ianya lebih kepada perasaan ingin membetulkan keadaan.

YAB, saya bagi pihak keluarga ingin memohon maaf sekiranya laporan sulit ini telah menimbulkan pelbagai kekeliruan yang berbangkit.

Segala pertimbangan dan kerjasama yang diberikan oleh YAB Perdana Menteri dalam menangani masalah ini sangatlah dihargai dan disanjung tinggi.

Sekian, Terima Kasih
Yang benar,
(signature illegible)
Ummi Hafilda bte Ali
(I/C A 0793275)

On 18 August 1997 at about 8.30 pm, Dato Amir Junus received a telephone call from the accused saying that he wanted to come to the Special Branch office to see Azizan. On being advised against this, the accused asked for Azizan to be taken to his Official Residence. Azizan was taken to the accused's Official Residence on the same day at 11.45 pm by DSP Aziz. At about midnight on the same day, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence. They showed him exhs P17 and P18. He was satisfied with exh P17 but not with exhP18. The accused then asked them to monitor the movement of Ummi and Azizan. Dato Amir Junus made a note of the meeting. It is exhP46 and reads as follows:

RAHSIA BESAR/CICERO

NOTA FAIL

Bilangan LF/T PCK II (C) Tarikh: 19 Ogos 1997

A SURAT PENGAKUAN UMMI HAFILDA DAN AZIZAN ABU BAKAR

Pada lewat malam 18 Ogos 1997, Dato' PCK dan saya telah diarahkan oleh Dato' Seri Anwar Ibrahim untuk memaklumkan beliau tentang perkembangan terbaru berhubung hasil soalsiasat terhadap Ummi Hafilda dan Azizan Abu Bakar. Sehubungan itu, Dato' PCK dan saya telah sampai di kediaman Dato' Seri Anwar pada tengah malam 18 Ogos 1997.

B (1) Turut sama ke kediaman Dato' Seri Anwar ialah Azizan Abu Bakar. Sebaik sahaja sampai, surat pengakuan Ummi Hafilda dan Azizan Abu Bakar telah diserahkan kepada Dato' Seri Anwar. Selepas itu, Azizan Abu Bakar pergi menemui Dato' Seri Anwar dan berbual-bual dengan beliau.

tt
C (Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO

Dato Amir Junus said that the reference in the note to confessions are the D apology letters.

On 18 August 1997, SAC Musa was informed by Dato Mohd Said that Ummi and Azizan would be handed over to the CID after the Special Branch had interviewed them. SAC Musa said that it is unusual for the Special Branch to be involved with an investigation conducted by the CID. E Dato Mohd Said himself said that normally a report like exh P16 will be investigated by the CID. The Special Branch surrendered Ummi and Azizan to the CID on 18 August 1997 at 10 am. A search was immediately conducted in the office of Ummi and the house of Azizan. From Ummi's office, the police recovered a computer diskette (exh P35); five copies of the Sworn Declaration of Azizan (exh P37A–E); two copies of exh P14A, B and F C (exh P36A and B) and a handwritten draft of exh P14A, B and C in 22 pages (exh P38A–V). Ummi said that it is in her own handwriting. From Azizan's house, the police seized a copy of his sworn declaration (exh P39) and a diary (exh P40). At 1.40 pm on that day, Dato Mohd Said instructed SAC Musa to surrender Ummi and Azizan to the Special Branch. At about 8.30 pm, SAC Musa went with a few of his officers to Dato Mohd Said's G office to find out the position of Ummi and Azizan. They were told about the letters written by the two and were requested to release them. SAC Musa then released Ummi and Azizan on police bail. On 19 August 1997, Dato Amir Junus gave SAC Musa copies of exhs P17, P18 and P14A, B and C. He found that the contents of exhs P15 and P14A, B and C were similar. H He said that upon receipt of exh P14A, B and C he wanted to continue with the investigation in order to find out the truth of the allegations against the accused. On the same day at about 5 pm, he recorded a statement from the accused who denied all the allegations.

On 20 August 1997, Dato Mohd Said handed to YAB Prime Minister exhs P17 and P18 and his report (exh D25). Exhibit D25 reads as follows:

I RAHSIA PERSENDIRIAN

Bil: LF PCK (C)

Tarikh: 20 Ogos 1997

YAB Dato' Seri Dr Mahathir bin Mohamad
Perdana Menteri Malasyia,
Pejabat Perdana Menteri,
Jalan Dato Onn,
50502, Kuala Lumpur

YAB Dato' Seri,

TOHMAHAN TERHADAP YAB DATO' SERI ANWAR IBRAHIM

Izinkan saya dengan segala hormat dan takzimnya memajukan bersama-sama ini pengakuan bertulis daripada Ummi Hafilda Ali dan Azizan Abu Bakar bertarikh 18 Ogos 1997 yang telah dibuat secara sukarela untuk disampaikan kepada YAB Dato' Seri.

(2) Pengakuan bertulis mereka ini diperolehi berikutan penyiasatan berhubung surat layang bertajuk 'Talqin Terbuka untuk Anwar Ibrahim'. Berasaskan surat layang tersebut, satu laporan polis telah dibuat oleh ASP Zull Aznam Haji Harun, pengiring YAB Dato' Seri Anwar Ibrahim pada 15 Ogos 1997. Sebelum itu, pihak polis telah juga menerima salinan laporan 19 mukasurat mengenai 'Perihal Salahlaku Timbalan Perdana Menteri' bertarikh 5 Ogos 1997 yang dialamatkan kepada YAB Dato' Seri sendiri. Laporan itu ditandatangani oleh Ummi Hafilda Ali.

(3) Berdasarkan kepada laporan ASP Zull Aznam, pihak polis telah menahan Ummi Hafilda Ali dan Azizan Abu Bakar pada 17 Ogos 1997 di bawah s 4(1)(b) Akta Hasutan 1948. Setelah keterangan diambil, mereka dibebaskan pada 18 Ogos 1997 dengan jaminan polis. Keterangan mereka menunjukkan bahawa tuduhan-tuduhan yang dibuat adalah tidak berasas dan lebih bergantung kepada andaian serta prasangka. Faktor utama yang mendorong Ummi Hafilda Ali mengemukakan laporan 'Perihal Salahlaku Timbalan Perdana Menteri' adalah berdasarkan kepada syak wasangka terhadap kakak iparnya, Shamsidar Taharin mempunyai hubungan sulit dengan YAB Dato' Seri Anwar Ibrahim. Shamsidar Taharin merupakan isteri kepada Mohamed Azmin Ali, Setiausaha Sulit Timbalan Perdana Menteri. Azizan Abu Bakar pula membuat tuduhan kerana terpengaruh dengan pujukan Ummi Hafilda Ali dan sebagai pemandu kepada keluarga Mohamed Azmin Ali, beliau tidak menggemari sikap angkuh Shamsidar Taharin.

(4) Saya juga ingin memaklumkan bahawa siasatan menerusi sumber-sumber lain turut menunjukkan tuduhan-tuduhan yang dilempar itu tidak mempunyai bukti dan urutan peristiwa seolah-olah sengaja direka. Di samping itu, terdapat pula tanda-tanda bahawa wujud golongan tertentu yang mungkin mempunyai agenda tersendiri dan memainkan peranan di belakang tabir menggalakkan Ummi Hafilda Ali dan Azizan Abu Bakar untuk memburuk-burukkan YAB Dato' Seri Anwar Ibrahim. Salah seorang daripadanya ialah Muhamad Taib yang dikatakan mendakwa dirinya sebagai pegawai SB kepada YAB Perdana Menteri. Muhamad Taib dikenalpasti sebagai Mohd Taib Salamon, bekas Inspektor Polis yang sebenarnya telah dibuang kerja.

(5) Berdasarkan hasil siasatan setakat ini, pihak saya tidak bercadang untuk terus menghalusi kes ini.

Sekian, terima kasih

A

Saya Yang Menurut Perintah
tt
(Dato Mohd Said bin Awang) Cp
Pengarah Cawangan Khas
bp Ketua Polis Negara
B Polis Diraja Malaysia

Rahsia Persendirian

Dato Mohd Said said that YAB Prime Minister had not asked for the report. He said that when exh D25 was prepared by him his investigation had not been completed yet and no investigation had been conducted by the Special C Branch to ascertain the truth of the allegations as contained in exh P14A, B and C. He prepared exh D25 for the purpose of sending exhs P17 and P18 to YAB Prime Minsiter. He said that he suggested in exh D25 that the investigation be stopped in view of exhs P17 and P18. The information from the other sources referred to in exh D25 was not verified. Exhibits P17 and P18 formed the primary basis of exh D25. The investigation was then D stopped by the Special Branch suddenly. At about 10 pm on the same day, Dato Mohd Said went with Dato Amir Junus to the accused's Official Residence to inform him that he had handed the letters to YAB Prime Minister.

On 27 August 1997, Dato Amir Junus informed Dato Mohd Said that E the accused wanted to see them after having received this instruction from ASP Zull Aznam. They went to the accused's Official Residence at about 10 pm. The accused directed them to get another letter each from Ummi and Azizan. Dato Amir Junus said that the instruction from the accused was that the letters were to be in the form of public statements. They were to be more committed, convincing and firm and must deny and withdraw all the F allegations contained in exh P14A, B and C. The accused wanted the letters to fully declare that he was not involved in any sex scandal. The letters were to be open letters without being addressed to anybody and were to be posted to his office. Dato Amir Junus kept a note of this meeting. It is exh P47 and reads as follows:

G RAHSIA BESAR/CICERO

NOTA FAIL

Bilangan HQ/LF/T PCK II (C) Tarikh: 28 Ogos 1997

SURAT PENGAKUAN UMMI HAFILDA DAN AZIZAN ABU BAKAR

H Pada malam 27 Ogos 1997, Dato' PCK dan saya telah diarahkan oleh Dato' Seri Anwar Ibrahim supaya pergi ke kediaman beliau untuk berbincang mengenai pengakuan Ummi Hafilda dan Azizan.

(2) Semasa perbincangan ini, Dato' Seri Anwar telah menyatakan rasa tidak puas hatinya dengan pengakuan kedua-dua mereka. Menurut beliau, surat pengakuan mereka tidak cukup kukuh dan kurang menyakinkan. I Dalam hubungan ini, Dato' Seri Anwar secara khusus telah mengarahkan supaya:

2.1. Ummi Hafilda dan Azizan Abu Bakar digesa membuat surat

pengakuan lain yang lebih komited dan menyakinkan dengan menafikan secara terus terang tuduhan-tuduhan terhadapanya; A

2.2. Tindakan diambil bagi menentukan kedua-dua mereka dengan tegas menarik balik kesemua tuduhan yang dibuat terhadap beliau;

2.3. Apabila pengakuan baru ini telah diperolehi, pengakuan mereka hendaklah dihantar kepada beliau melalui pos ke pejabat Timbalan Perdana Menteri. B

tt
(Amir bin Junus) A/SAC I
T/PCK II
AJ/MKHI

RAHSIA BESAR/CICERO C

Dato Amir Junus clarified that his reference to a confession in the note is the public statement.

On 28 August 1997, Dato Mohd Said and Dato Amir Junus directed ACP Mazlan to get the public statements from Ummi and Azizan as wanted D by the accused. ACP Mazlan was informed by Dato Mohd Said that the accused was not satisfied with exhs P17 and P18. ACP Mazlan then arranged for a meeting with Azizan on the same night at about 8.30 pm at the Kelab Golf PDRM Titiwangsa. At the meeting, ACP Mazlan noticed that Azizan appeared pressured and frustrated. ACP Mazlan took about two hours to persuade and win over Azizan's heart to make him write the letter. E Azizan then agreed to write the letter of total denial. ACP Mazlan informed Dato Amir Junus who came to the club to see for himself the letter of denial. Having read the letter, Dato Amir Junus telephoned the accused through his handphone and read to him the contents of the letter. ACP Mazlan saw Dato Amir Junus making some alterations to the letter. Dato Amir Junus said that the accused made some amendments to the letter. Amongst the F amendments required by the accused were that the word 'denial' must be inserted in one of the paragraphs and it must also state that Azizan never made the sworn declaration. Dato Amir Junus then handed the letter with the amendments to ACP Mazlan and instructed him to ask Azizan to rewrite the letter. Azizan was disappointed and after having first refused G later agreed to write the letter as requested. The handwritten letter of Azizan is exh P19. The letter was then typed and it was signed by Azizan. It is exh P20 and reads as follows:

Kenyataan Umum oleh
Azizan bin Abu Bakar
K/P No 5980324 H

Bahawa saya Azizan bin Abu Bakar mengaku tidak pernah menulis Pengakuan Bersumpah yang bertarikh 5 Ogos 1997 yang telah disebarkan baru-baru ini.

Segala apa yang terkandung di dalam surat tersebut adalah semata-mata fitnah belaka. Saya terpaksa menjelaskan di sini, sebab nama saya telah dibabitkan sebagai penulis surat tersebut oleh orang/orang-orang yang tidak I bertanggungjawab semata-mata untuk tujuan politik.

Saya merasa kesal di atas apa yang telah berlaku dan berharap dengan

penjelasan ini dapat memperbetulkan keadaan.

Yang benar,
tt
Azizan bin Abu Bakar
(K/P 5980324)

On 29 August 1997, ACP Mazlan handed over the letter to Dato Amir Junus who then instructed ACP Mazlan and DSP Aziz to get a similar letter from Ummi as the accused was not satisfied with exh P18. ACP Mazlan met Ummi for this purpose at Room No 1426, Hotel Pan Pacific on the same day at 10.20 am with DSP Aziz and woman constable Noraini bte Abdullah. They explained to her the instructions that they had received from Dato Amir Junus. ACP Mazlan said that they faced a big problem in getting a denial letter from Ummi as she is a person of strong character. They spent about five hours trying to persuade her to write the letter. In order to get her to write the letter, they told her to make a public statement of denial in the mass media knowing that she might agree to something lesser. She refused to do that and at one time cried. Finally, she agreed to write the letter. The letter that she wrote was then taken to Dato Mohd Said and Dato Amir Junus for their perusal. Dato Amir Junus rang up the accused and read the letter to him in order to ensure that it was in accordance with what he had wanted. The accused directed certain amendments to be made which were done accordingly. The handwritten letter of Ummi is exh P29. It reads as follows:

Kenyataan Umum oleh
Ummi Hafilda bte Ali
I/C No A0793275

Saya dengan ini ingin membuat satu kenyataan umum berhubung dengan laporan yang telah dikemukakan kepada YAB Perdana Menteri bertarikh 5 Ogos 1997 mengenai Perihal Salahlaku Timbalan Perdana Menteri.

Saya mengakui keterlanjuran telah berlaku di dalam beberapa pendakwaan yang dikemukakan di mana didapati beberapa fakta tersebut tiada asas yang boleh menjurus kepada tohmahan dan fitnah bagi pihak yang tertuduh.

Kekeliruan dan kekecohan telah berlaku di mana saya dapati ada pihak-pihak tertentu yang tidak bertanggungjawab telah cuba mengeksploitasikan dan mengeruhkan lagi keadaan dengan pelbagai surat layang yang rata-ratanya berbau fitnah bagi tujuan politik mereka. Saya ingin menafikan sekeras-kerasnya bahawa saya terbabit dalam penerbitan surat-surat layang yang timbul selepas tarikh 5 Ogos 1997.

Rentetan dari peristiwa tersebut, kekesalan timbul pada diri saya di mana tanpa disedari pelbagai implikasi telah timbul, di antaranya kestabilan politik negara juga turut terjejas. Saya menyesali di atas apa yang berlaku dan mengaku akan membetulkan keadaan supaya isu ini tidak berlanjutan.

Oleh itu, saya ingin mengambil kesempatan melalui pengakuan terbuka ini untuk memohon maaf di atas keterlanjuran tersebut dan saya merayu kepada pihak-pihak yang berkepentingan supaya menghentikan segera spekulasi ini yang telah pun menular ke seluruh negara supaya isu ini dapat dihentikan demi kepentingan parti dan negara.

Yang benar,
tt
Ummi Hafilda bte Ali
(I/C No: A0793275)
Tarikh: 29 Ogos 1997

The letter as amended was typed and was taken back to Ummi. She was not satisfied with it. However, after some persuasion she agreed to sign it. It is exh P22 and reads as follows:

Kenyataan Umum oleh
Ummi Hafilda bte Ali
I/C No A 0793275

Saya mengakui keterlanjuran telah berlaku di dalam tuduhan yang dikemukakan kepada YAB Perdana Menteri di mana didapati aduan tersebut tiada berasas sama sekali dan boleh menjurus kepada tohmahan dan fitnah bagi individu-individu berkenaan.

Kekeliruan dan kekecohan telah berlaku di mana saya dapati ada pihak-pihak tertentu yang tidak bertanggungjawab telah cuba mengeksploitasikan keadaan dengan pelbagai surat layang dan mengaitkan nama saya yang rata-ratanya berbau fitnah bagi tujuan politik mereka. Saya ingin menafikan sekeras-kerasnya bahawa surat-surat yang diedarkan yang kononnya ditandatangan oleh saya bukanlah surat saya kepada YAB Perdana Menteri tetapi telah direka oleh orang-orang tertentu.

Saya menyesali di atas apa yang berlaku dan mengaku akan membetulkan keadaan supaya isu ini tidak berlanjutan.

Oleh itu, saya ingin mengambil kesempatan melalui pengakuan terbuka ini untuk memohon maaf di atas keterlanjuran tersebut dan saya merayu kepada pihak-pihak yang berkepentingan supaya menghentikan segera fitnah ini.

Yang benar,
tt
Ummi Hafilda bte Ali
(I/C No A 0793275)

Tarikh: 29 Ogos 1997.

She was also asked to write a covering letter to the accused which she did. It is exh P21 and reads as follows:

29 Ogos 1997

Dato' Seri Anwar Ibrahim
Timbalan Perdana Menteri
Jabatan Perdana Menteri
Jalan Dato Onn
Kuala Lumpur

Penjelasan Umum

Merujuk kepada perkara di atas, bersama-sama ini disertakan dengan penjelasan mengenai pengakuan umum yang dilampirkan.

Saya memohon maaf di atas kesulitan yang timbul berhubung perkara berbangkit.

A

Sekian. Terima Kasih.

Yang benar,
tt
Ummi Hafilda bte Ali

B

ACP Mazlan then handed both the letters to Dato Amir Junus who put them in an envelope addressed to the accused. He gummed it and placed a stamp on it. He then handed it to ASP Abdul Aziz bin Haji Ahmad to have the stamp cancelled at the post office. This instruction was carried out. ASP Abdul Aziz was not cross-examined. Dato Amir Junus said that this C was done to show that the envelope had been posted to the office of the accused through the post office. On 29 August 1997, Dato Mohd Said and Dato Amir Junus went to the accused's Official Residence to hand over the letters written by Ummi and Azizan. The accused opened the envelope and read the letters. He was satisfied with them.

D It is of interest to note that exhs P20, P21 and P22 carry the Received Rubber Stamp of the Deputy Prime Minister's Office. Suhaime bin Yunus who is in charge of receiving letters in the Deputy Prime Minister's Office said that the Received Rubber Stamp that he puts on letters received are the same as on exhs P20, P21 and P22. When he stamps a letter, he puts a number within it. Exhibits P20, P21 and P22 do not have any number on E the stamp. He also records the letters he receives in a register. He produced exh P34 which is a certified copy of the register for 30 August 1997. Exhibits P20, P21 and P22 are not recorded there. He concluded that he did not receive these letters on 30 August 1997 and was not cross-examined.

F On 30 August 1997, SAC Musa and the Director of CID, Dato Ismail Che Ros, met the accused at his request. Tan Sri Mohtar Abdullah, the Honourable Attorney General, was also present. The accused asked SAC Musa about the investigation being carried out on exh P15. SAC Musa said that the police would carry out a detailed investigation to ascertain if the allegations made were true or not and that the investigation was still at an G early stage and not completed yet. The accused said that the matter need not be investigated as it was contrary to YAB Prime Minister's decision that the matter had been settled and that it was a slander. The accused said that he did not want any action to be taken against Ummi and Azizan.

On 2 September 1997, SAC Musa informed ASP Zull Aznam to get H ready Azmin, Shamsidar, Dato Nallakaruppan, Aton and ASP Zull Aznam himself for the purpose of recording their statements. His purpose was to find out their relationship and any other statement they may wish to make. When he told ASP Zull Aznam his purpose for wanting to record their statements. ASP Zull Aznam said that he will contact him. On the same day at 11.50 am, SAC Musa received a phone call from Azmin saying that the I accused wanted to see him at his office. SAC Musa met the accused at 12.20 pm at the Prime Minister's Department. At the meeting, the accused asked SAC Musa what was the use of him recording statements from the

witnesses as Ummi and Azizan had written letters to him denying their allegations of sexual misconduct and sodomy against him. SAC Musa replied that he wanted to record their statements in order to complete his investigation before submission to the Attorney General. The accused then gave him exhs P20, P21 and P22 and instructed him to stop the investigation. SAC Musa then reminded the accused of the Attorney General's instructions that all investigations on government officers and leaders have to be forwarded to him. When this procedure was explained to the accused, he instructed SAC Musa not to send the investigation papers to the Attorney General. SAC Musa then left taking with him exhs P20, P21 and P22. In his office SAC Musa went through these documents together with exhs P17 and P18.

On 3 September 1997, SAC Musa discussed his investigation with Dato Ismail Che Ros and showed him the documents that he had gone through. They decided to send the investigation papers to the Honourable Attorney General with a recommendation that no further action be taken on the case. At that stage, the investigation was not completed yet. Statements had not been recorded from Azmin, Shamsidar, Aton, Dato Nallakaruppan and ASP Zull Aznam. SAC Musa said that the documents influenced him to close the case. At that time, he did not know how they were prepared by Ummi and Azizan nor that the Special Branch was involved in their preparation. On 8 September 1997, SAC Musa met the Honourable Attorney General to brief him on his investigation into exhs P16 and P14A, B and C and showed him exhs P17, P18, P20, P21 and P22. He suggested that no further action be taken in the investigation. After reading the exhibits, the Honourable Attorney General agreed. SAC Musa said that without these documents, he would have carried out a more thorough investigation into exhs P16 and P14A, B and C. He also said that if he had found that the allegations were true, he would have proposed that the accused be prosecuted. He said that he found out about the involvement of the Special Branch in obtaining exhs P17, P18, P20, P21 and P22 while investigating into P56 which was made on 19 June 1998 — the report on *Buku 50 Dalil*. He had interviewed Ummi, Azizan, Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz and had found out about the involvement of the Special Branch in the preparation of exhs P17, P18, P20, P21 and P22.

Dato Mohd Said said that directions were given to them by the accused to obtain the retractions. He said that he had to follow the instructions given by the accused as he was the Deputy Prime Minister and not any ordinary person. He said that he could not have refused it and had no choice. Thus, he felt compelled to carry out the instructions. He said that he continued to direct his officers to neutralize Ummi and Azizan notwithstanding the fact that there were some difficulties in doing so, as the direction that he had received was from the Deputy Prime Minister. Dato Amir Junus said that he obeyed the instructions given by the accused as he was the Deputy Prime Minister as well as the Minister of Finance. He added that if the accused was an ordinary man, he would not have obeyed the instructions. In obtaining the letters, both ACP Mazlan and DSP Aziz were carrying out the instructions of Dato Mohd Said and Dato Amir Junus.

A THE SUBMISSION OF PARTIES AT THE CLOSE OF THE CASE FOR THE PROSECUTION

I shall deal with a major part of the submission of the parties and my response thereto now, while some other features of the submission will be highlighted in the context of the relevant parts of the judgment as it B progresses.

(I) THE STANDARD OF PROOF ON THE PROSECUTION AT THE CLOSE OF ITS CASE

In contending that the standard of proof on the prosecution at the close of C its case is beyond reasonable doubt, the defence conceded that this is governed by s 180 of the Criminal Procedure Code which reads as follows:

> (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prime facie* case against the accused.
>
> D (2) If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the Court shall record an order of acquittal.
>
> (3) If the Court finds that a *prime facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.

E It was argued that the phrase 'prima facie' which has not been defined in the section means 'beyond unreasonable doubt'. In support of this argument, the defence referred to *Munusamy v PP* [1987] 1 MLJ 492 where it was held that if an accused person remains silent after the court has ruled that there is a prima facie case, he must be convicted. As the trial could end at that stage, the proof required at the close of the case for the prosecution is F beyond reasonable doubt. The result, as contended, is that the court must, as of necessity, evaluate the evidence of the prosecution witnesses at that stage on a maximum evaluation of credibility and reliability. It was submitted that this court is bound by the judgment of the Court of Appeal in *Lt Kol Yusof bin Abdul Rahman v Kol Anuar bin Md Amin & Anor* [1997] 1 MLJ 562.

G The standard of proof on the prosecution at the end of its case has been subject to some judicial controversy culminating in amendments to the Criminal Procedure Code in this area of the law. In *Lt Kol Yusof bin Abdul Rahman v Kol Anuar bin Md Amin &Anor,* Mahadev Shankar JCA in speaking for the Court of Appeal reviewed cases such as *Haw Tua Tau v PP* H [1981] 2 MLJ 49, *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1, *Junaidi bin Abdullah v PP* [1993] 3 MLJ 217, *Khoo Hi Chiang v PP and another appeal* [1994] 1 MLJ 265 and the proposed amendments to the Criminal Procedure Code at its Bill stage which has now become law and said at pp 575–576:

I > ... Standing by itself, the term 'prima facie' means 'at first sight'. But a 'prima facie' case means a case has proceeded to that stage where it is regarded as proved because the evidence led supports such a finding if evidence to the contrary is disregarded. See *Black's Law Dictionary* (4th Ed) which goes on to

say:

> 'A litigating party is said to have a prima facie case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side.'

This definition is no different from that contained in *Mozley and Whiteley's Law Dictionary* (11th Ed, 1993) which reads (at p 208):

> 'A litigating party is said to have a prima facie case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown *only by rebutting evidence adduced by the other side.*'

With the greatest respect to all concerned, we think that the implications of what constitutes 'a prima facie case' in a jury trial and a trial in which a judge is sitting alone are quite different. The omission to appreciate this appears to have resulted in the importation of judicial dicta from jury trials in Commonwealth countries which has only served to cloud the real issues in Malaysia.

Where a judge is sitting with a jury, what he considers to be a prima facie case is of necessity circumscribed by his limited role on the issue as to whether there is evidence to go to the jury (see *R v Galbraith* (1981) 73 Cr App R 124 referred to by Edgar Joseph Jr SCJ in *Khoo Hi Chiang* [1994] 1 MLJ 265 at p 290. The relevant passage in this judgment is set out in full in his judgment in *Arulpragasan* at p 43). The equation of such a duty to a judge sitting alone as though a prima facie case meant the same thing in a summary trial, is not correct in the Malaysian context.

And at pp 577–578:

> To put it another way, what the court is concerned with at the close of the prosecution's case is the *probative force* of the prosecution's evidence. Taken in its totality, its force must be sufficient (if no further evidence is adduced to the contrary) to induce the court to *believe* in the existence of the facts stated in the charge or *to consider* its existence *so probable* that a prudent man ought to act upon the supposition that those facts existed or did happen. This exercise cannot be postponed to the end of the trial. The law requires the court to carry it out then and there whether or not the submission is made and before the court announces its decision to call for the defence.
>
> In summary trials, therefore, establishing a prima facie case is simply just another way of saying that the prosecution evidence at its close must be such as would, *if unrebutted,* warrant the conviction of the accused. However, for the benefit of those who see more in *Haw Tua Tau* than they should, this does not mean that a conviction should automatically follow if the defence is called. That will happen if the defence calls no evidence at all to rebut the prosecution case, and does nothing before the end of the trial to dissuade the court from the view it has taken. In other words, calling for the defence is not of itself a pronouncement of guilt or a conviction but a ground for proceeding with the next stage of the case when it becomes the accused's obligation to tip the scales of justice back in his favour.
>
> The degree of proof required to establish a prima facie case is easiest demonstrated by asking ourselves what the court should do after the defence

A is called, if the accused elects to remain silent, calls no evidence, and cannot come up with any good reason why the earlier conclusion was wrong, eg by bringing new authorities which take a different view of the law or pointing out some inherent weaknesses in the prosecution case he may have overlooked earlier. Thus unqualified and unrebutted, the court has to convict on the very same material. Nobody would dare suggest as a matter of prudence that the B degree of proof required at this stage is not proof beyond all *reasonable* doubt. Nobody has yet satisfactorily explained why it should be any different at the close of the case for the prosecution in a summary trial. Each state (sic) calls for the decision by the judge or magistrate of a legal issue which only predicates that degree of certainty required by s 3 of the Evidence Act.

Consequently, it is the opinion of this court that merely because some C parts of the prosecution evidence support the charge, the defence should *not* be called regardless of the state of the rest of the evidence. The court must make an assessment of the prosecution evidence as a whole and must acquit if it cannot accept the prosecution's case because it cannot be believed (or is not credible — it means the same thing) by reason of material contradictions or for any other reasons.

D What emerges from this illuminating judgment is clear. The meaning of a 'prima facie' case in s 180(1) of the Criminal Procedure Code must be understood in the context of a non-jury trial. A prima facie case arises when the evidence in favour of a party is sufficiently strong for the opposing party to be called on to answer. The evidence adduced must be such that it can be E overthrown only by rebutting evidence by the other side. Taken in its totality, the force of the evidence must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. As this exercise cannot be postponed to the end of the trial, a maximum F evaluation of the credibility of witnesses must be done at the close of the case for the prosecution before the court can rule that a prima facie case has been made out in order to call for the defence. Be that as it may, I am unable to agree with the defence submission that this means that the prosecution must prove its case beyond reasonable doubt at that stage. A case can be said to have been proved beyond reasonable only upon a consideration and G assessment of all the evidence (see *Canadian Criminal Evidence* (3rd Ed) by PK McWilliams QC para 39:10000). It must be observed that in a criminal trial, if the defence raises a reasonable doubt as to the truth of the prosecution case or as to the accused's guilt, there will be an acquittal, and if no such doubt is raised, a conviction (see *Mah Kok Choeng v R* [1953] H MLJ 46). This evidential burden may be discharged by the defence either in the course of the prosecution case or in the course of its own case (see *Wong Chooi v PP* [1967] 2 MLJ 180). It follows that a case cannot be said to have been proved beyond reasonable doubt until the accused has concluded his case. A trial is said to be concluded when the accused, after he has been called upon to enter his defence, either elects to remain silent or gives a I statement from the dock or gives evidence on oath. If the accused elects to remain silent and fails to show why the finding of prima facie case is wrong for any reason, the case will be said to have been proved beyond reasonable

doubt as the accused will have no more opportunity of raising a reasonable doubt. Where the accused gives a statement from the dock or gives evidence on oath, the court will have to consider all the evidence before it. If the court is satisfied that no reasonable doubt has been raised in that exercise, the case will similarly be said to have been proved beyond reasonable doubt. This accords with the new s 182A of the Criminal Procedure Code which provides that at the conclusion of the trial, the court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt. Thus, a prima facie case as prescribed by the new s 180(1) of the Criminal Procedure Code must mean a case which if unrebutted would warrant a conviction.

(II) WHETHER ONLY TWO CHARGES SHOULD HAVE BEEN PREFERRED AGAINST THE ACCUSED

In submitting that only two charges ought to have been preferred against the accused, the defence contended that the first and the third charges should have been the basis of one charge and the second and fourth charges of the other. However, no reasons were advanced in support of the argument apart from a mere statement to that effect. It is probably anchored on the similarity of the factual matrix of the two sets of charges in that the manner in which the accused used his position and the advantage he obtained thereby are the same.

This submission is answered by s 165(1) of the Criminal Procedure Code which provides that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Illustration (b) to the section is a good example of how the section operates. It reads as follows:

> *A* has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under s 446 of the Penal Code. *A* may be separately charged with and convicted of the possession of each seal under s 473 of the Penal Code.

The test in determining whether two or more acts constitute the same transaction was laid down in the Indian case of *Amrita Lal Hazra v R* (1915) ILR 42 Cal 957 in the following words:

> It is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction; but circumstances which must bear on the determination of the question in an individual case may be easily indicated: they are proximity of time, unity or proximity of place, continuity of action and community of purpose.

This test has been approved and applied in cases such as *Jaafar bin Hussain v PP* [1950] MLJ 154, *Chin Choy v PP* [1955] MLJ 236, *Cheong Sik Kwan v PP* [1959] MLJ 189 and *PP v Ridzuan Kok bin Abdullah* [1995] 2 MLJ 745.

In this case, there can be no dispute that there was proximity of time, unity or proximity of place, continuity of action and community of purpose

in respect of the charges. The events in respect of all the charges took place from 12 August 1997 to 3 September 1997. All the denial letters were obtained in a continuous series of acts for the purpose of having the allegations retracted. However, the transaction reveals more offences than one. The allegations were made by two separate persons in respect of two separate matters. The letters of denial were obtained from them on separate occasions and served separate purposes. Each of the acts referred to in the four charges therefore form a separate offence in respect of which separate charges can lawfully be preferred as done. I was therefore unable to agree with the submission advanced.

(III) WHETHER A POLICE REPORT MUST BE LODGED TO COMMENCE AN INVESTIGATION

It was contended by the defence that until now no police report has been lodged against the accused in respect of any abuse of power or corruption. It was argued that a police report must be lodged in respect of any crime in order to facilitate a proper police investigation and that there cannot be an investigation into an alleged crime without a complaint. The defence referred to the police reports marked as exhs P16 and P56 and said that they are not complaints against the accused. P16 was made by ASP Zull Aznam on behalf of the accused on the advice of Dato Mohd Said and Dato Amir Junus. P56 is a complaint of criminal defamation against the author of *Buku 50 Dalil* and was lodged by Azmin on behalf of the accused. In reply, the prosecution said that SAC Musa testified that the investigation into the offences with which the accused has been charged was as a result of exh P56. SAC Musa classified this report under s 499 of the Penal Code for an offence of criminal defamation and said that it is normal procedure for the police to ascertain the truth or otherwise of the allegations in complaints of this nature. The prosecution concluded by saying that it is not unusual for a person who makes a report for himself to be charged when the investigation into the report made by him necessitates that course of action.

I agree with the submission of the prosecution that a person who makes a report on a matter may himself be charged as a result of investigation conducted by the police on the report. Such a course of action is not prohibited by s 107(1) of the Criminal Procedure Code which deals with information relating to the commission of an offence. The section reads as follows:

> Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant.

The section merely relates to the giving of information about the commission of a crime and does not in any way prescribe the persons to be charged following the investigation. A report lodged pursuant to the section will be the basis upon which the police will commence their investigation. The word 'information' in the section means something in the nature of a complaint or accusation or at least information of a crime, given with the object of putting the police in motion in order to

investigate, as distinguished from information obtained by the police when actively investigating a crime (see *Mallal's Criminal Procedure* (5th Ed) paras 4152 and 4154). As the object of the section is merely to activate the investigative function of the police, it does not mean that a person who makes a report cannot himself be charged if the investigation reveals an offence against him. Furthermore, the section does not say that there can be no investigation without a report. It has been held by the Privy Council that the receipt and recording of a report is not a condition precedent to the setting in motion of a criminal investigation and that there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged (see *Emperor v Khwaja Nazir Ahmed* AIR 1945 PC 18). It has also been held that a police report is not a condition precedent for the commencement of a criminal prosecution (see *Apren Joseph v State of Kerala* AIR 1973 SC 1, *Herchun Singh & Ors v PP* [1969] 2 MLJ 209). I also refer to *PP v Foong Chee Cheong* [1970] 1 MLJ 97 where Gill J (as he then was) said at pp 97–98:

> ... However important a document a first information report is, it can never be treated as a piece of substantive evidence and the fact that no first information report was made is not in itself a ground for throwing out a case. The powers of the police to investigate do not depend solely on Chapter XIII of the Criminal Procedure Code. The duties of a police officer as set out in s 20 of the Police Act 1967 include apprehending all persons whom he is by law authorized to apprehend and these duties are amplified in s 23 of the Criminal Procedure Code. Most of these duties imply a power to investigate whether there has been an information under s 107 of the Criminal Procedure Code or not(see *Vellasamy v Rex* [1941] MLJ 233 at p 236).

I therefore held that the investigation and prosecution of the accused based on exhs P16 and/or P56 is valid in law. In any event, there is no requirement that such investigation and prosecution must be based on a police report with the result that the action instituted against the accused is valid in law notwithstanding the absence of a police report against him.

(IV) EVIDENTIAL VALUE OF THE ACCUSED'S CAUTIONED STATEMENT AT THE CLOSE OF THE CASE FOR THE PROSECUTION

On 27 September 1998, the accused made a cautioned statement (exh D72) which was tendered in evidence by the defence. The material parts of it read as follows:

S: Adakah Dato' Seri faham amaran yang telah dibacakan kepada Dato' Seri?

J: Ya, saya faham.

S: Adakah Dato' Seri ingin menanya apa-apa berkaitan dengan amaran tersebut?

J: Saya ingin menegaskan bahawa saya seharusnya berhak menemui pegumbela segera memandangkan pertuduhan-pertuduhan yang begitu

banyak terhadap saya. Saya juga bimbang keadaan fizikal saya lebih-lebih lagi setelah dipukul sebaik sahaja saya dimasukkan ke dalam lokup Bukit Aman pada malam Isnin yang lalu.

S: Adakah Dato' Seri mengarahkan beberapa pegawai Polis untuk menutup kes Dato' Seri berhubung surat layang yang disiasat oleh polis?

J: Tidak.

S: Adakah Dato' Seri ingin menambah apa-apa atau meminda apa-apa di dalam kenyataan ini?

J: Tidak.

It was the contention of the defence that the court should consider the cautioned statement as it is evidence pursuant to s 113 of the Criminal Procedure Code.

The law relating to the evidential value of a cautioned statement which is exculpatory, as the cautioned statement of the accused in this case is, is well settled. In *Pendakwa Raya v Mansor bin Mohd Rashid & Anor* [1996] 3 MLJ 560, Chong Siew Fai CJ (Sabah and Sarawak) in writing for the Federal Court referred to a plethora of authorities such as *PP v Adetunji Adeleye Sule* [1993] 2 MLJ 70, *PP v Chan Kim Choi* [1989] 1 MLJ 404 and *R v Storey* (1968) 52 Cr App R 334 and said at pp 575–576:

> In relation to the use of the exculpatory statement of the first respondent (D25), we note that the learned trial judge had used the statement to conclude that Amran occupied room 'K' in the house. Learned counsel for the first respondent had also submitted before us that the first respondent's statement, D25, showed that he (the first respondent) did not negotiate nor did he ask the second respondent to buy the cannabis. With respect, we are of the view that the approach was wrong. A purely exculpatory or self-serving statement is not evidence of the facts stated though it may be admitted to show the reaction or attitude of the accused at the time when he made it. And in considering whether there is a case to answer, the trial judge ought not take into account such a statement as the basis for founding an order of acquittal and discharge.

As Edgar Joseph Jr FCJ explained in *PP v Adetunji Adeleye Sule*, a cautioned statement which is wholly exculpatory should not be made the foundation of an order of acquittal especially at the close of the case for the prosecution, since at that stage the accused not having given evidence himself, his explanation could not be tested by cross-examination.

It is therefore clear that the cautioned statement made by the accused cannot be made the foundation of an order of acquittal at the close of the case for the prosecution. It may warrant consideration at the end of the trial when the accused has adduced evidence.

(v) THE EFFECT OF CARRYING OUT INVESTIGATION INTO THE CASE AFTER THE ACCUSED WAS CHARGED

The defence argued that in this case the investigation was not complete when the accused was charged. Reference was made to *PP v Tan Kim San* [1980] 2 MLJ 98 to say that this is wrong in law.

I agree that in normal circumstances, an investigation should be complete before a person is charged. It would surely be wrong to commence a prosecution without any investigation at all on the material ingredients to be proved. Where such investigation has been carried out, I do not see any illegality with the police carrying out further investigation to suit the exigencies of a case as it unfolds itself once the trial has commenced. In this case, the evidence of SAC Musa makes it clear that the police had recorded the necessary statements from the witnesses between June and September 1998. That was before the accused was charged in court. The further investigation conducted by SAC Musa was with regard to the DNA tests which have now been expunged and the recording of some further statements. Though the evidence relating to the DNA tests is no longer relevant, SAC Musa explained that the delay in conducting this investigation was due to difficulties in obtaining blood samples from the accused. The recording of statements from MaAmin and Rahim King after the trial commenced is not unreasonable as their role assumed prominence only when exhs D55 and D90 were tendered by the defence. I was therefore unable to say with confidence that the prosecution charged the accused first and investigated later. When he was charged the necessary investigation had been carried out. It cannot therefore be said that the investigation was not complete when the accused was charged. In any event, the court is not concerned with when and how evidence was obtained but only with its admissibility (see *Ng Yiu Kwok & Ors v PP* [1989] 3 MLJ 166).

(VI) WHETHER IT IS PERMISSIBLE FOR A WITNESS TO SEE HIS STATEMENT GIVEN TO THE POLICE UNDER S 112 OF THE CRIMINAL PROCEDURE CODE BEFORE GIVING EVIDENCE

In this case, ACP Mazlan had given a statement to the police. On being asked in cross-examination about this statement, he said:

> Kalau saya ta' silap I gave a statement under s 112 CPC sometime early September or end of August tahun ini. Saya ada satu salinan statement itu. Pegawai penyiasat memberi satu salinan kepada saya.

In objecting to the statement having been given to ACP Mazlan, the defence said this:

> The evidence of PW1, PW2, PW7 and PW11 beats an IBM computer in its details. Is it humanly possible to remember such exact details as to the time and conversations? It is submitted that the evidence of the said witness in such exact and minute details is impossible and incredible. It is submitted that they must all be coached to give such detailed evidence. See *PP v Datuk Harun bin Idris* [1977] 1 MLJ 15 at p 19.
>
> The secret was revealed when SP7 said that he was given his 112 CPC statement by the investigating officer. The investigating officer Musa (PW13) denied giving any 112 CPC statement to witnesses. He said 112 CPC statements are privileged. If PW7 had his 112 CPC statements, why should not all the other prosecution witnesses be given 112 CPC statements so that they can follow their 112 CPC statements and give 'coached' evidence. See *Moomin bin Seman v PP* [1993] 3 MLJ 282. The giving of 112 CPC statements

A also renders nonsensical the provisions of s 159 of the Evidence Act 1950. No wonder the exact details are too good to be true. See *Dato Mokhtar Hashim v PP* [1983] 3 MLJ 232.

This submission, couched in language in the way it was advanced, could have been better articulated with a more legal undertone. Be that as it may, the
B principal argument of the defence is that the statement should not have been shown to the witness as it violates s 159 of the Evidence Act 1950 following its interpretation in *Moomin bin Seman v PP* [1993] 3 MLJ 282. In that case, Richard Tallalla J held that the giving of a police statement to a witness before he gives evidence has the effect of negating ss 159 and 160 of the Evidence Act 1950. In so ruling his Lordship declined to follow cases such as
C *R v Richardson* [1971] 2 All ER 773 and *Lim Hong Yap v PP* [1978] 1 MLJ 154. In the latter, case Wee Chong Jin CJ said at p 158:

> We agree that there can be no general rule that witnesses may not before trial see the statements they made at some period reasonably close to the time of the event which is the subject of the trial. Indeed one can imagine many cases, particularly those where the material witnesses are persons such as police
D officers or narcotics officers whose daily duties consist of investigating activities of a criminal nature, where such a role would militate very greatly against the interests of justice.
>
> In England, in *R v Westwell* [1976] 2 All ER 812, the Court of Appeal, Criminal Division, has also held that the fact that the prosecution has failed to
E inform the defence that witnesses had seen their statements before giving evidence can be no bar to conviction. In our opinion, the law is the same in Singapore.

I am unable to see why the law should be any different in Malaysia. In my opinion, a police statement can be shown to a witness before he gives evidence. There is no legal prohibition against this. Section 159 of the
F Evidence Act 1950 is confined in its operation to contemporaneous statements and, in this case the police statement is obviously not a contemporaneous one. In any event, the section is restricted in its operation to refreshing of memory 'while under examination'. As *Sarkar on Evidence* (15th Ed) Vol II says at p 2295:

G > But the words do not seem to debar a witness from referring to any such writing before his examination.

To that extent, I part company with the views expressed by Richard Tallala J in *Moomin bin Seman v PP* [1993] 3 MLJ 282. I pause to add that the weight of the evidence of a witness who gives evidence after having seen his
H police statement may be affected on the facts of a particular case. In this case, ACP Mazlan was not cross-examined beyond asking him whether he had seen his statement. The cross-examination ought to have proceeded further in order to enable the court to determine whether the defence had been prejudiced by the witness having seen the statement. The other witnesses referred to by the defence were not cross-examined as to whether
I they had been shown their statements. I am unable to agree with the suggestion that they were coached based on the way they gave evidence and on the totality of the evidence adduced.

(VII) WHETHER AN ADVERSE INFERENCE SHOULD BE DRAWN AGAINST THE PROSECUTION FOR FAILURE TO CALL CERTAIN WITNESSES

The defence contended that an adverse inference should be drawn against the prosecution for its failure to call as witnesses YAB Prime Minister, the Honourable Attorney General, Tun Daim Zainuddin, Dato Seri Megat Junid, the IGP, Dato Ismail Che Ros, Dato Aziz Shamsuddin, ASP Zull Aznam, Azmin and Shamsidar.

The provision of law that deals with the drawing of an adverse inference for failure to call a witness is s 114(g) of the Evidence Act 1950 which reads as follows:

> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The court may presume —
>
> ...
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it; ... .

The scope of this subsection was considered by the (then) Supreme Court in *Munusamy v PP* [1987] 1 MLJ 492 where Mohamed Azmi SCJ said at p 494:

> ...It is essential to appreciate the scope of s 114(g) lest it be carried too far outside its limit. Adverse inference under that illustration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. It may be drawn from withholding not just any document, but material document by a party in his possession, or for non-production of not just any witness but an important and material witness to the case.

It is settled law that in a criminal trial the prosecution has a discretion, provided that there is no wrong motive, as to whether or not to call any particular witness and in particular has a discretion not to call in support of its case a witness whom it does not believe to be a witness of truth (see *Khoon Chye Hin v PP* [1961] MLJ 105, *Adel Muhammed el Dabbah v Attorney-General for Palestine* [1944] AC 156). There is no obligation compelling the prosecution to call all witnesses who speak to facts which it desires to prove (see *Malak Khan v Emperor* 72 IA 305; AIR 1946 PC 16). Thus, the prosecution is not duty bound to call all the witnesses from whom statements may have been taken (see *PP v Teh Cheng Poh* [1980] 1 MLJ 251). This accords with s 134 of the Evidence Act 1950 which provides that no particular number of witnesses shall in any case be required for the proof of any fact. This section enshrines the well recognized maxim that 'evidence has to be weighed and not counted.' As a general rule, a court can and may act on the testimony of a single witness though uncorroborated and one credible witness outweighs the testimony of a number of other witnesses of indifferent character (see *Vadivelu Thevar v State of Madras* AIR 1957 SC

614). What is significant is that the prosecution must call the necessary witnesses to unfold the narrative upon which its case is based. In this regard, reference may be made to the advice delivered by the Privy Council in the celebrated case of *Seneviratne v R* [1936] 3 All ER 36 where Lord Roche said at p 48–49:

> ... Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defence. If it does so, confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination.

On the type of witnesses who must be called by the prosecution, Lord Roche said in the same case at p 49:

> ... Witnesses essential to the unfolding of the narratives on which the prosecution is based, must, of course, be called by the prosecution whether in the result the effect of their testimony is for or against the case for the prosecution.

Thus, an adverse inference for not calling a witness cannot be drawn if there is sufficient other evidence to support the prosecution case (see *Namasiyiam & Ors v PP* [1987] 2 MLJ 336). No adverse inference can also be drawn when a witness has been offered for cross-examination (see *Saw Thean Teik v R* [1953] MLJ 124) or has been made available to the defence and the defence did not call the witness (see *PP v Chee Kon Fatt* [1991] 3 CLJ 2564). If a witness has been made available to the defence, there can be no suggestion, as stated by Lord Thankerton in the case of *Adel Muhammed el Dobbah v Attorney-General for Palestine*, '... that the prosecutor has been influenced by some oblique motive' (see *Samsudin v PP* [1962] MLJ 405). However, where the prosecution evidence falls short of proving a prima facie case, the right of not calling a witness by merely offering him to the defence will not be available (see *Abdullah Zawawi v PP* [1985] 2 MLJ 16, *PP v Chew Yoo Choi* [1990] 2 MLJ 444, *Teoh Hoe Chye v PP* [1987] 1 MLJ 220).

I shall now consider whether an adverse inference should be drawn against the prosecution for its failure to call the witnesses referred to in the submission of the defence.

YAB Prime Minister and the IGP

The defence submitted on the materiality of these two persons based on exhs D25, IDD23 and IDD24. D25 is a report sent by Dato Mohd Said to YAB Prime Minister. It was contended that this report stated that there were persons hiding behind the curtain in making the allegations against the accused with an agenda of their own and that YAB Prime Minister and the IGP are material witnesses with regard to this report. It was further

contended that in a second report sent to YAB Prime Minister these names were mentioned and that this could have been denied if these two persons had been called as witnesses by the prosecution. IDD23 is a press report where YAB Prime Minister was reported to have said that there was no case with regard to the allegations against the accused. IDD24 is a similar press statement by the IGP.

In my opinion, the argument raised by the defence to portray the significance of YAB Prime Minister and the IGP as material witnesses in reliance on the exhibits referred to has only to be stated to be rejected. With regard to exh D25 the material witness is its author, Dato Mohd Said, who was extensively cross-examined on it. If the defence wanted further clarification on this exhibit they ought to have questioned its maker when he was in the witness box or could even have applied to recall him for that purpose. That was not done. Thus, both YAB Prime Minister and the IGP would be in no position to assist the court in answering any questions on exh D25 as they would have no personal knowledge of its contents. The so-called second report was allegedly sent by Dato Mohd Said to YAB Prime Minister. Dato Mohd Said, after some lengthy questioning, said there was no such report. How this report can thus be considered as material when the evidence discloses that there was no such report is beyond my imagination. On the materiality of these two persons with regard to exhs IDD23 and IDD24, it must be observed that these exhibits, just as exh D25 was, are defence exhibits. It is the responsibility of the defence to call the makers of the statements in the two press reports to prove them if the reports are considered material to its case. Alternatively, they could have been sought to be admitted under s 81 of the Evidence Act 1950. It is no part of the prosecution's function to discharge the evidential burden of the defence. In the circumstances, it was my view that the failure by the prosecution to call YAB Prime Minister and the IGP is not fatal to its case as their evidence is not necessary to unfold the narrative upon which the prosecution case is based.

The Honourable Attorney General and Dato Ismail Che Ros

It was contended by the defence that the Honourable Attorney General and Dato Ismail Che Ros were material witnesses who ought to have been called in view of the part played by them with regard to the second and fourth charges. They met the accused together with SAC Musa on 30 August 1997 when the accused said that the allegations need not be investigated. On 3 September 1997, Dato Ismail Che Ros and SAC Musa decided to send the investigation papers to the Honourable Attorney General with a recommendation to take no further action on the case. On 8 September 1997, SAC Musa met the Honourable Attorney General who agreed to the recommendation.

It must be borne in mind that the crux of the advantages alleged to have been obtained by the accused in the second and fourth charges are the use of the denial letters by him. When he handed over the letters to SAC Musa on 2 September 1997, nobody else was present. Thus, SAC Musa is the only

witness who can testify on this fact. What happened thereafter is the action taken based on the letters. The evidence of SAC Musa is sufficient to narrate the action taken. Furthermore, the action taken was also not challenged by the defence. In the circumstances, the Honourable Attorney General and Dato Ismail Che Ros are in no position to testify on the use made by the accused of the denial letters to save himself from any criminal action. It was therefore my view that they were not essential to unfold the narrative upon which the prosecution case was based. Accordingly, they were not material witnesses who ought to have been called.

Tun Daim Zainuddin and Dato Seri Megat Junid

The defence did not submit on the materiality of Tun Daim Zainuddin and Dato Seri Megat Junid as witnesses who ought to have been called apart from merely mentioning their names in respect of whom an adverse inference ought to be drawn for failure to call them as witnesses. The burden is on the defence to show the importance of the evidence of these two persons which it failed to discharge. Be that as it may, the available evidence shows that their role in this case is minimal. Tun Daim Zainuddin merely met Ummi to listen to her complaints while Dato Seri Megat Junid only met Ummi on some occasions and was alleged to have handed over a copy of exh P14A, B and C to the IGP. As evidence of their meeting with Ummi is not relevant to the prosecution case, they are not material prosecution witnesses. It was therefore my view that the failure by the prosecution to call them as witnesses is not fatal.

Dato Aziz Shamsuddin

Dato Aziz Shamsuddin is the political secretary to YAB Prime Minister. He is one of the persons to whom Ummi had handed exh P14A, B and C to be handed over to YAB Prime Minister. According to Ummi, Dato Aziz Shamsuddin is in possession of a taped conversation between the accused and Azizan where the accused is alleged to have asked Azizan to deny all the allegations. The defence contended that the taped conversation ought to have been produced.

In my opinion, Dato Aziz Shamusddin is not a material witness as the handing over of exh P14A, B and C to YAB Prime Minister is not in issue in this case. The alleged request by the accused asking Azizan to deny the allegations as contained in the taped conversation, though of some importance, does not warrant the drawing of an adverse inference against the prosecution as it is not essential to the unfolding of the narrative upon which the prosecution case is based. Ummi has given oral evidence of the contents of the taped conversation. Such oral evidence is sufficient and the tape recording is only relevant as corroboration of the conversation. The defence did not cross-examine Ummi to determine whether the taped conversation could have contained anything inconsistent with her oral evidence. I was therefore of the view that the non-production of the taped conversation was not fatal to the case for the prosecution. The possession of the taped conversation by Dato Aziz Shamsuddin does not therefore make him a material witness.

ASP Zull Aznam

The defence contended that ASP Zull Aznam, being the maker of exh P16, is an important witness. It was argued that he could have explained how and why the meetings between the accused and Dato Mohd Said and Dato Amir Junus were arranged. Further, he could have explained how and why Azizan came to see the accused in or about June/July 1998 at his house after unsuccessfully trying to see the accused at his office.

In my opinion, ASP Zull Aznam is not an important witness with regard to exh P16 as he merely made the report on behalf of the accused. The making of the report is not disputed. In addition, there is sufficient other evidence to explain the making of exh P16. With regard to the contention that he could have explained why the meetings between the accused and Dato Mohd Said and Dato Amir Junus were arranged, sufficient evidence has been adduced by the prosecution on this issue. His explanation on how and why Azizan came to see the accused in or about June/July 1998 is not necessary as there is sufficient other evidence on it. Azizan has given his version of the meeting. If ASP Zull Aznam is in a position to provide an explanation for the meeting which is contrary to the assertion of Azizan, then it is for the defence to call him as its witness, if necessary, bearing in mind the fact that it is not the duty of the prosecution to prove the case for the defence. I was therefore of the view that ASP Zull Aznam was not a material witness necessary to unfold the case for the prosecution.

Azmin

The defence contended that Azmin, being the maker of exh P56, is an important witness. It was argued that he could also have given evidence about the UMNO General Assembly in June 1998 and about the distribution at the meeting of *Buku 50 Dalil* which contained a reproduction of exh P14A, B and C.

In my opinion, Azmin is not an important witness with regard to exh P56 as he merely made it on behalf of the accused. The making of the report is also not disputed. In addition, there is sufficient other evidence to explain the making of exh P56. His knowledge about the UMNO General Assembly in June 1998 and the distribution of *Buku 50 Dalil* and its contents at that meeting are not relevant to the issues in this case. I was therefore of the view that Azmin was not a material witness who ought to have been called by the prosecution.

Shamsidar

The defence contended that Shamsidar is an important witness with regard to the allegation of sexual misconduct made against the accused.

As I had ruled that the truth or falsity of the allegations is not a fact in issue, her evidence is not only immaterial but also irrelevant to the case for the prosecution. It follows that it was not necessary for the prosecution to have called her as a witness.

Notwithstanding what I have said thus far, I must also point out that all the witnesses referred to by the defence in support of its argument were made available to the defence and it exercised its right to call all of them except the Honourable Attorney General. As I said earlier, this precludes the application of the presumption in s 114(g) of the Evidence Act 1950 in view of the fact that the prosecution evidence did not fall short of proving a prima facie case without them.

(VIII) MEDIA PUBLICITY

It was contended by the defence that the extensive reporting of the evidence of witnesses given in this case in the media has weakened the value of the evidence adduced. It was pointed out that Dato Amir Junus's evidence on the meaning of 'gempar' is an indication of this.

This objection has some substance. It is equivalent to a person being present in court while evidence is being given and who is later called as a witness. Local cases have taken the view that the fact that a witness remains in court during the progress of a trial is no ground for refusing to allow him to give evidence, although it may reduce the weight to be attached to such evidence as may be given (see *Edwards v East India Co* (1840) 3 Ky 6, *Mohamed Nor v PP* [1939] MLJ 305).

It is my misfortune to have to say that in this case there was no cross-examination of any of the witnesses to ascertain the extent to which they may have been influenced by media reports of the evidence adduced. Thus, I am unable to say whether any witness has been so influenced. As far as I know, this is perhaps the first case which has attracted so much media attention largely due to the public interest that it has generated. Given that trials are transparent and open to the public, the media publicity given to the evidence adduced in this case is inevitable. However, that cannot be sacrificed at the altar of justice for the accused which is paramount. I have therefore made it my duty to scrutinize the evidence of every witness, particularly in cases where the evidence of witness is similar to that of a previous witness, in as much detail as possible in order to ensure that the accused is not prejudiced in any way by the media publicity.

(IX) WHETHER DATO MOHD SAID, DATO AMIR JUNUS, ACP MAZLAN, DSP AZIZ AND SAC MUSA ARE ACCOMPLICES

It was the submission of the defence that all these police officers are accomplices on the assumption that their version of the sequence of events is true.

The law relating to accomplice evidence is well settled. An accomplice is a person who has concurred fully in the criminal designs of another for a certain time, until getting alarmed, or from some other cause, has turned against his former associate, and gives information against him (see *R v Mullins* (1848) 3 Cox CC 526, *Rattan Singh v PP* [1971] 1 MLJ 162). This makes it clear that there can be no automatic finding that a person is an accomplice merely because of his actus reus. In this regard, I refer to *Ng Kok*

Lian v PP [1983] 2 MLJ 379 where Salleh Abas CJ (Malaya) (as he then was) said at p 382:

> To be an accomplice, the witness who received the bribe must be the one who was abetting the offence of giving it committed by the accused, the giver. Only then would the receiver be regarded as particeps criminis. This means that just as the giver who as a principal offender requires mens rea, so does an accomplice witness who received the gratification. If he received the gratification innocently or without any corrupt motive or if he did not receive it at all, although it was given to him, as far as he is concerned, the gift did not change its character to become an illegal gratification just because the giver (the accused) gave it with corrupt motive or with evil intention. Thus, in every case when the issue is raised that a witness is an accomplice, the court must study the evidence and make the necessary finding. There can be no rule of law or evidence that a witness is automatically an accomplice just because of his actus reus. The whole idea is completely contrary to the basic concept of criminal liability.

The court must first decide whether a witness is an accomplice (see *Nathan v PP* [1972] 2 MLJ 101). His credibility must then be assessed just like that of any other witness. The court must then decide whether his evidence is to be accepted without corroboration or not. This was explained by Cussen J in *PP v Haji Ismail & Anor* [1940] MLJ 76 at p 79 in the following terms:

> There is no question of the mechanical application of any general rule of presumption. When it is a question of this particular presumption, the credibility of the witness who is in the position of an accomplice must be individually judged just as any other witness, the same considerations being applied, with the added one that he is an accomplice. The court must consider who and what he is, his demeanour, bearing, the manner and quality and substance of his evidence in itself and in relation to all the circumstances of the case. The nature, quality and degree of his complicity must be examined. Then finally the court must form its opinion whether he is to be given credit and his evidence accepted without corroboration or not.

The degree of complicity of an accomplice has always been one of the matters to be considered in deciding whether or not corroboration can be dispensed with (see *Soosay Dass v PP* [1951] MLJ 57, *Rauf bin Haji Ahmad v PP* [1950] MLJ 190). Sometimes the accomplice is not a willing participant in the offence but a victim of it. When he acts under a form of pressure which it would require some firmness to resist, the Privy Council has held that reliance can be placed on his uncorroborated evidence (see *Srinivas Mall v Emperor* AIR 1947 PC 135). In *The Queen v Liyanage* (1965) 67 NLR 193, this view was adopted. The court said at p 213:

> Sometimes the accomplice acts under a form of pressure which it would have required some firmness to resist, as for instance when he is a subordinate police officer who receives orders from his superior in the force and finds it difficult to disobey such orders. The explanation to s 114 ... shows that 'the force of the presumption to be drawn (against the evidence of an accomplice) varies as the malice to be imputed to the deponent'. Whatever attenuates the wickedness of the accomplice tends at the same time to diminish the presumption that he will not acknowledge and confess it with sincerity and truth.

It was contended by the defence that Dato Mohd Said, Dato Amir Junus, ACP Mazlan, DSP Aziz and SAC Musa were all particeps criminis and accessories before and after the fact in procuring or aiding and abetting the commission of the offence. It was argued that the offence alleged to have been committed by the accused could not have been committed without their participation. With regard to SAC Musa, it was argued that his meeting with the accused on 30 August 1997 and his obtaining of exhs P17, P18, P19, P20, P21 and P22 followed by his recommendation to the Honourable Attorney General that no further action be taken on the investigation renders him an accomplice. It was contended that all these police officers may have done what they did in order to please the accused and turned against him upon commencement of investigation in order not to jeopardize their position. This is supported by the fact that they did not make any report against the accused. By implicating the accused, they have saved themselves from any action and that there is a possibility that they have concocted the evidence against the accused in order to minimize their role.

The position of Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz

I agree that without the participation of these witnesses, the accused could not have committed the offences. Both Dato Mohd Said and Dato Amir Junus carried out the direction of the accused to obtain the letters from Ummi and Azizan. The direction given by the accused and the carrying out of it for the purpose of obtaining the letters constitute one of the elements in the charges. They instructed ACP Mazlan and DSP Aziz to change the stand of Ummi and Azizan within 24 hours. Dato Amir Junus said that the instruction given to ACP Mazlan and DSP Aziz to make Ummi and Azizan to retract their allegations is contrary to the practice of the Special Branch and that that was the first time the technique was applied outside their normal routine. He also said that the instructions given by the accused to him and Dato Mohd Said were similar to the instructions they gave to ACP Mazlan and DSP Aziz. Thus, they had executed the design of the accused to obtain the letters from Ummi and Azizan. Without them, the accused could not have committed the offences and the steps taken by them to obtain the letters show that they were fully conscious of what they were doing. I therefore ruled that Dato Mohd Said and Dato Amir Junus are accomplices.

On 17 August 1997, DSP Aziz was handed over copies of exhs P15 and P14A, B and C by ACP Mazlan. They were instructed by Dato Mohd Said to neutralize Ummi and Azizan within 24 hours. They understood the instructions they received to mean that they must change the stand of Ummi and Azizan so that they will withdraw all the allegations of sexual misconduct against the accused. The evidence also discloses that ACP Mazlan and DSP Aziz took active steps to obtain the letters from Ummi and Azizan by threatening them. DSP Aziz told Ummi that if she did not give the letter, the accused may take retaliatory action against her. He took Azizan to the accused's house on 18 August 1997 at 11.45 pm. He said that what he was asked to do was very odd and outside his normal duties.

Contrary to normal practice, he was instructed to carry out his duties in this case before he could identify what kind of threat Ummi and Azizan posed. ACP Mazlan said that he felt it was strange for the Special Branch to use the turning over and neutralization process in a case of this nature. When he was instructed to obtain the second set of letters from Ummi and Azizan (exhs P20 and P22), he was informed by Dato Mohd Said that the accused was not satisfied with exhs P17 and P18. A similar instruction was given by Dato Amir Junus to ACP Mazlan and DSP Aziz when he asked them to obtain the second letter from Ummi. It is therefore clear that ACP Mazlan and DSP Aziz knew that they were instructed by their superiors to obtain the letters on the direction of the accused. As they had actively participated in the offences committed by the accused, they are also accomplices.

I shall now consider whether their evidence, subject to a finding on their credibility, requires corroboration. This depends on the degree of their complicity in the offences committed by the accused. Dato Mohd Said said that he had to follow the instructions given by the accused as he was the Deputy Prime Minister and not any ordinary person. He felt compelled to carry out the instructions and could not have refused them. Thus he had no choice in the matter. Dato Amir Junus was in a similar position. In addition, he was also subjected to instructions from Dato Mohd Said, his superior officer, to carry out what the accused wanted. ACP Mazlan and DSP Aziz were subordinate police officers who carried out the orders of their superiors. They said that they felt compelled to carry out the instructions. It is therefore clear that all the police officers were not willing participants in the offences but victims of them. They acted under a form of pressure which would have required some firmness to resist. In fact, they had no choice but to comply with the orders. In the circumstances, reliance can be placed on their uncorroborated evidence subject of, course to, it being found to be credible.

The position of SAC Musa

The fact that SAC Musa met the accused on 30 August 1997 and that he obtained exhs P20, P21 and P22 followed by his recommendation to the Honourable Attorney General that no further action be taken on the investigation does not on its own make him an accomplice. To make such a finding on those facts would amount to an automatic finding that he is an accomplice merely because he was involved in the commission of the offences by the accused. On 30 August 1997, the accused merely told SAC Musa that the matter need not be investigated. SAC Musa did not agree to it. The handing over of exhs P20, P21 and P22 by the accused to SAC Musa on 2 September 1997 does not clothe him with the colour of an accomplice as, at that time, he did not know of the history of those documents. When he recommended that no further action be taken on the investigation based on these documents, he did not know about the involvement of the Special Branch in their preparation. He came to know of that only very much later when he was investigating into exh P56. Thus, even though SAC Musa acted on these documents, he did not have the mens rea in the commission of the offences by the accused as he did not

know the history of those documents. In the premises, it is my view that he is not an accomplice.

(X) CREDIBILITY OF WITNESSES FOR THE PROSECUTION

The defence submitted on the credibility of Dato Mohd Said, Dato Amir Junus, ACP Mazlan, DSP Aziz, SAC Musa, Azizan and Ummi.

The Privy Council has stated that the real tests for either accepting or rejecting the evidence of a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case (see *Bhojraj v Sitaram* AIR 1936 PC 60). It must, however, be observed that being unshaken in cross-examination is not per se an all-sufficient acid test of credibility. The inherent probability or improbability of a fact in issue must be the prime consideration (see *Muniandy & Ors v PP* [1966] 1 MLJ 257). It has been held that if a witness demonstrably tells lies, his evidence must be looked upon with suspicion and treated with caution, but to say that it should be entirely rejected would be to go too far (see *Khoon Chye Hin v PP* [1961] MLJ 105). It has also been held that discrepancies and contradictions there will always be in a case. In considering them, what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy (see *De Silva v PP* [1964] MLJ 81). The Indian Supreme Court has pointed out that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments (see *Ugar v State of Bihar* AIR 1965 SC 277). It is useful to refer to *PP v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 where Raja Azlan Shah FJ (as His Highness then was) said at p 19:

> ... In my opinion, discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened ... The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other.

In the absence of any contradiction, however, and in the absence of any element of inherent improbability, the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted (see *PP v Mohamed Ali* [1962] MLJ 257).

I shall now consider the credibility of the witnesses for the prosecution who came under attack by the defence.

Dato Mohd Said

In cross-examination, Dato Mohd Said was asked this question: 'If someone higher than the Deputy Prime Minister were to instruct you to lie in court would you do it?'. The defence focussed on his answer: 'I may or not lie' and

said that it sums up his credibility and character with the result that no credence can be given to his evidence. The prosecution in reply said that this answer is purely hypothetical and that it must be understood in its proper context. It has been held that a hyper-technical approach by taking sentences torn out of context here or there from the evidence which does not go to the root of the matter would not ordinarily permit rejection of the evidence as a whole (see *State of Uttar Pradesh v Anthony* AIR 1985 SC 48). It is therefore necessary to consider the context in which Dato Mohd Said gave the answer. In this regard, my notes of evidence read as follows:

Question: If someone higher than the DPM were to instruct you to lie in court, would you do it?

Answer : The point is no one asked me. It would depend on the situation. I may or may not lie.

Question: What are the instances when you would lie?

Answer : I would not know.

Question: You are a most unscrupulous man.

Answer : That is counsel's opinion.

Question: I am justified in saying it from your own answer.

Answer : Your questions are like that.

Question: When would you lie?

Answer : I would not know.

This line of questioning was continued by the defence at the end of Dato Mohd Said's re-examination with leave of court. It runs as follows:

Question: You admitted earlier that you may or may not lie depending on the circumstances. I put it to you that you have an inclination to lie.

Answer : I do not have the inclination to lie and I have already informed the court that I will not lie in this court before the judge. The original question asked by the defence counsel was a theoretical question.

Question: Earlier you had told the court that you may or may not lie if an important man were to ask you to do so. I put it to you that you have an inclination to lie.

Answer : I have already answered it.

Question: I put it to you that since you said you may lie if asked by a person of importance, you are an unreliable person.

Answer : I am reliable.

The answer of Dato Mohd Said that he may or may not lie is, as stated by him, in response to a theoretical question. It must be understood in the context of the evidence that I have reproduced and not in isolation. The answer given is so theoretical that Dato Mohd Said himself said that he would not know the instances when he would lie. It is a general and frank statement to suit the circumstances of a particular occasion. However, what is important is that he has said that no one had asked him to lie in court and that he would not lie in this court. It is also significant to note that he had said that he has no inclination to lie. Thus, the answer given by him is neutralized by the fact that no one had asked him to lie in court and that he has no inclination to lie. If I

were to accept the defence contention, then, by the same token, I have to rule Dato Mohd Said as a reliable witness based on his answer given in cross-examination that he is reliable. Further, by the same process of reasoning of the defence, I will have to rule Dato Amir Junus as a credible witness based on his answer in cross-examination that he will not lie to save his skin. It is my view that the defence argument is anchored on an isolated theoretical answer without taking into account the other circumstances of the case. In the final analysis, the credibility of Dato Mohd Said depends on the evidence he has given in court based on the principles of assessment of the credibility of a witness that I have discussed earlier and not, as contended by the defence, on an isolated and a part only of an answer given.

The defence also contended that Dato Mohd Said is a witness who kept changing his position. It was pointed out that when he was questioned as to whether he had sent a report to YAB Prime Minister, his answer was a spontaneous 'No'. When confronted with a press statement by YAB Prime Minister, he resiled from his earlier position and admitted that he did send a report. He also denied having sent a second report when his answer showed that there was a second report. The fact that Dato Mohd Said admitted having sent a report to YAB Prime Minister after he was shown a press statement does not, to my mind, show that he kept on changing his position. It was not suggested to him that his earlier answer was a lie. The spontaneous answer he gave when he was referred to the press statement shows that he was reminded of the report that he had sent to YAB Prime Minister and had replied accordingly. With regard to the existence of the second report, he said initially that at the most he could have sent two reports. Later, he said that he does not think that there was such a report though he does not deny it. To a further question, he again said that he does not think that there is such a report. Being pressed further he said that he could have sent one or two reports but most probably only one. Later, he said that he does not think that there is another report. He then said that having looked at the first report, he is quite certain that that could be the only report that he sent to YAB Prime Minister and that it is unlikely that he would have prepared a second report. Finally, upon being questioned by the court, he said that he is quite certain that there was no second report. The answers given by Dato Mohd Said do not show that there was a second report. The general tenor of his evidence was that though he was not sure of the existence of the second report, the probabilities are that there was none. I was satisfied with his answer when he said that he is quite certain that there was no second report. It is my view that the manner in which Dato Mohd Said answered the questions on both instances did not give me the impression that he was being evasive or was changing his position. He was just not sure of the reports. When a witness is not sure of an answer, it does not mean that he is changing his stand. On the contrary, it may suggest that he is truthful and also that he has not been coached. With regard to the questioning on the second report, it must be noted that the questions were the same though couched in different words. The answers given are therefore understandable. The argument advanced thus has no substance.

The defence also attacked the credibility of Dato Mohd Said by its reference to his change of language in describing the tone in which the accused asked him to act. It was contended that he said that in the initial stages the accused 'requested' him to do certain things. After a 15-minute break in proceedings, the witness suddenly changed the tone of his evidence. Instead of using the word 'request', he used the word 'directed' and thereafter used the same word. The defence suggested that something drastic must have happened during the break. It was contended that as Dato Mohd Said was prepared to change the complexion of his evidence, it affects his credibility. It was said that he was cross-examined on this point and that his reply was that he construed the word 'request' as a 'direction'. For reasons which I will consider in a later part of the judgment I do not agree that the language used by Dato Mohd Said to describe his communications with the accused affects the colour of his credibility in any way. It must also be observed that Dato Mohd Said was not cross-examined or challenged on his sudden change of language from 'requested' to 'directed' as claimed by the defence in its submission.

In my opinion therefore the challenge mounted by the defence against the credibility of Dato Mohd Said is baseless. His version of the sequence of events is consistent with itself and fits in with the rest of the evidence adduced. He has withstood lengthy and vigorous cross-examination though I am aware that the fact that a person is unshaken in cross-examination is not an acid test of his credibility. In the circumstances of the case and coupled with his demeanour and the manner in which he gave evidence, it is my firm finding that he is a credible witness.

Dato Amir Junus

It was contended that the evidence of Dato Amir Junus must be considered in the context of the evidence of Dato Mohd Said in that he did a repair job of the evidence of Dato Mohd Said and that what he said is riddled with embellishments, exaggerations and contradictions. The defence in making this general statement did not condescend to particularize the allegation. Be that as it may, the law that I have referred to on the assessment of credibility of witnesses makes it clear that these features are common in the evidence of any witness. If they are of a material nature, the evidence must be scrutinized with greater care unless its inherent improbabilities make it unsafe. My perusal of his evidence with meticulous care does not disclose any material embellishments, exaggerations or contradictions.

Another assault launched against the credibility of Dato Amir Junus was the approaches he made to the accused in respect of some contracts. What he said in cross-examination on this issue is as follows:

> Saya tidak bersetuju sama sekali bahawa saya ada berjumpa En Azmin Ali bercakap tentang projek perniagaan untuk saya. Saya ulang lagi sekali bahawa saya tidak pernah meminta apa-apa projek melalui En Azmin Ali. I never approached Azmin Ali for such favours. Melalui Azmin, saya tidak pernah sekali-kali memohon apa-apa projek. Saya ada berjumpa tertuduh tetapi bukan melalui Azmin. Saya berjumpa dengan tertuduh. I agree that I

A introduced a friend to the accused with regard to a business matter. At that particular time, belum lagi untuk saya participate dalam projek itu. Ada kemungkinan besar saya participate dalam projek itu apabila saya bersara. Berkenaan dengan ekuiti firma sekuriti di Sabah, saya cuma menolong kawan saya. Kawan ini adalah kawan Dato' Seri Anwar sendiri. Kalau saya ta' silap, kawan itu adalah Dato Salleh Said Kruak. Saya setuju bahawa saya
B mengintroducekan En Lau Thian Hock kepada tertuduh. Saya meluahkan perasaan saya untuk mendapat sebahagian dari ekuiti dalam satu firma sekuriti tetapi saya tidak mendapat apa-apa. I was not disappointed. I deny that I was trying to do some side business. Bagi saya, saya hanya menolong kawan saya bukan saya kecewa seperti yang dikatakan oleh peguam. I deny that I was disappointed and angry with the accused. Saya setuju saya ada
C membawa En Lau Thian Hock ke rumah tertuduh sebanyak tiga kali di atas persetujuan tertuduh. Saya tidak bersetuju dengan cadangan peguam bahawa saya telah memalukan tertuduh dan telah dimarahi oleh tertuduh kerana membawa Lau Thian Hock ke rumahnya. Saya tidak dapat apa-apa dari Lau Thian Hock. Saya tidak setuju bahawa saya ada mengatakan kepada tertuduh bahawa I was in SB for all my life and have no money. I deny that as a result I became very angry and frustrated. I deny that I still hold a grudge against the
D accused and that that caused me to exaggerate and embellish the evidence against him. Apa-apa keterangan yang saya beri dalam kes ini adalah mengikut kejadian-kejadian yang berlaku.

Based on this evidence, the defence said that Dato Amir Junus was trying to make a fortune through the accused and must have thought that it was a
E golden opportunity to make big money. At this stage of the submission, I enquired whether there was any evidence to support the argument. The reply was that it was put to the witness and that he did not agree. The extract from the notes of evidence that I have reproduced above shows that it was never put to him. Even if it was put to him, it cannot become evidence when it is denied. The court can only form inferences from the evidence adduced. Thus there is
F no evidence to show that Dato Amir Junus intended to make a fortune out of his connection with the accused. However, his evidence shows that he intended to participate in a business enterprise upon his retirement for which purpose he introduced a friend to the accused. He denied that he bears a grudge against the accused and that this caused him to exaggerate and
G embellish the evidence against the accused. I am unable to accept this argument because if Dato Amir Junus was indeed annoyed with the accused he would have lodged a report against him long ago. As a matter of fact, he did not do anything about it till police started investigating into the matter after the report on *Buku 50 Dalil* (exh P56) was lodged. It is clear that if there was no such investigation, the question of Dato Amir Junus giving evidence
H against the accused would never have arisen.

When Dato Amir Junus was asked whether he had told the accused that his telephone had been tapped, the answer was in the negative. When this matter was pursued by the defence after a day's break in the hearing, Dato Amir Junus said:

I Saya ingin memberi penjelasan. Apa yang dikatakan oleh peguam ialah telefon tertuduh ditap pada 1996. Tetapi di sini, saya ingin memberi penjelasan bahawa pada bulan Jun atau Julai 1996, tertuduh telahpun berhubung dengan

> Pengarah Cawangan Khas pada masa itu, Dato Norian Mai, mengatakan bahawa terdapat kehilangan wang di rumah tertuduh. Dato Norian telahpun mengarah saya bersama dengan beberapa pegawai pergi ke rumah tertuduh dan berbincang dengan tertuduh mengenai dengan kehilangan wang, kalau ta' silap saya, RM4 juta. In 1996, saya tidak katakan telefon itu ditap atau tidak. Pada tahun 1995, Dato' Seri Anwar telahpun memberi kebenaran untuk telefonnya di rumah dimonitor untuk mengetahui siapakah yang melakukan pencurian di rumahnya. Saya tidak bersetuju bahawa saya berbohong. Saya tidak setuju bahawa ini adalah sesuatu yang baru saya reka. Saya tidak setuju bahawa saya telah memberitahu tertuduh yang telefonnya ditap kerana beliau mempunyai ramai musuh politik.

It was contended by the defence that the answer of Dato Amir Junus is tinged with vindictiveness. After the break in the hearing, he was eager to answer the question and grabbed the opportunity to give an answer which was unrelated to the question. The answer was vicious and uncalled for. It is fabricated and totally irrelevant. If in fact the question of RM4m is true, it would have formed the subject matter of another charge. I agree with the defence that the answer given by Dato Amir Junus was irrelevant. But it was an irrelevant answer to an equally irrelevant question. Be that as it may, it is not uncommon for witnesses who are asked certain questions to go further and explain the answer so as to portray a more accurate picture of the situation. If the examining party feels that the explanation is not necessary, it is his duty to stop the witness. Although the questions and answers in connection with the tapping of the accused's telephone are irrelevant, I am unable to agree that the answers show vindictiveness on the part of Dato Amir Junus as alleged. No evidence was adduced to that effect nor does the evidence that I have reproduced support such an inference.

The argument of the defence that Dato Amir Junus is a vindictive and dangerous witness whose evidence is embellished and exaggerated cannot withstand the forceful effect of exhs P42 to P47 which I have reproduced in an earlier part of the judgment. These are contemporaneous notes of the meetings that the accused had with Dato Mohd Said and Dato Amir Junus that the latter had made. These notes are consistent with the oral evidence of Dato Amir Junus and their authenticity was not challenged at all in cross-examination. On the evidential value of contemporary documents, like these notes, I consider it appropriate to refer to the dissenting speech of Lord Pearce in the House of Lords in *Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyds' Rep 403 where his Lordship, in considering the judicial process in assessing the credibility of an oral witness, said at p 431:

> Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident case, that with every day that passes, the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was

A taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance ... All these problems compendiously are entailed when a judge assesses the credibility of a witness; they are all part of one judicial process. And in the process, contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part.

B It has been held that the purpose of such evidence of a witness's previous statements is and can only be to support his credit, when his veracity has been impugned, by showing a consistency in his oral evidence (see *Fox v General Medical Council* [1960] 3 All ER 225). As Dixon CJ said in *Nominal Defendant v Clements* (1960) 104 CLR 476 at p 479:

C If the credit of a witness is impugned as to some material fact to which he deposes on the ground that his account is a late invention or has been lately devised or reconstructed, even though not with conscious dishonesty, that makes admissible a statement to the same effect as the account he gave as a witness if it was made by the witness contemporaneously with the event or at a time sufficiently early to be inconsistent with the suggestion that his account D is a late invention or reconstruction.

As a witness's credit is normally attacked in cross-examination, it may be permissible to adduce evidence of his previous statement in re-examination (see *R v Connolly* [1991] 2 Qd R 171). It is my view that the admission of the notes as evidence in the examination-in-chief of Dato Amir Junus is not E objectionable as the substance of his evidence is similar to that of Dato Mohd Said which had already come under severe attack before the former gave evidence. The earlier admission of this evidence serves the purpose of giving the defence an opportunity to challenge them in view of the defence advocated which, however, was not done. Be that as it may, the notes having been made contemporaneously with the meetings among the parties are F also admissible under s 6 of the Evidence Act as part of the res gestae (see *Chhotka v State* AIR 1958 Cal 482), *Milne v Leisler* (1862) 7 H & N 786;158 ER 686, *Stanfield v Rosin* [1966] Qd R 10, *R v Dawes* [1992] 2 Qd R 435) and under 157 of the same Act to show consistency (see *Mohamed Ali v PP* [1962] MLJ 230). I pause to say a few words about s 157 of the Evidence Act 1950. ERSR Coomaraswamy in his book entitled *The Law of Evidence* G Vol II (Book 2) p 757, in commenting on s 157 of the Sri Lanka Evidence Act which is similar to ours, says at p 757:

Nokes points out that Stephen's conception of corroboration, as seen in s 157 of the Indian Evidence Act, is now regarded as fallacious ... Therefore, the corroboration set out in s 157 is only for the purpose of showing that the H witness is consistent.

In *Ariyadasa v The Queen* (1966) 68 NLR 257, TS Fernando J said:

The corroboration that s 157 contemplates is not corroboration in the conventional sense in which the term is used in courts of law, but in the sense of consistency in the conduct of the witness tending to render his testimony I more acceptable.

In my opinion therefore, exhs P42 to P47, being contemporary documents, play a critical role in enhancing the credibility of Dato Amir Junus. His

evidence is also consistent with the rest of the evidence adduced by the prosecution. He had withstood lengthy and vigorous cross-examination though I am aware that the fact that a person is unshaken in cross-examination is not an acid test of his credibility. I scrutinized his evidence with greater care bearing in mind the fact that he may have been aware of the evidence of Dato Mohd Said publicized in the media. Having taken into account these factors, the manner in which he gave his answers and based on his demeanour while giving evidence, it is my firm finding that his evidence is credible.

ACP Mazlan and DSP Aziz

It was contended by the defence that if the instructions given by Dato Mohd Said and Dato Amir Junus to ACP Mazlan and DSP Aziz were unlawful, the latter were acting unlawfully as very senior and experienced police officers. Yet they said that they followed the law and did not do anything unlawful. They said that they only follow lawful orders and never follow unlawful orders. However, they unashamedly made confessions of unlawful conduct. What they did was against the law. It was contended that a police officer who admits to unlawful conduct can never be trusted or believed. The statutory obligations contained in the Police Act and the Criminal Procedure Code are dead letters and meaningless to such an officer. If they can turn over and neutralize people, there is nothing to prevent them from themselves turning over against the accused who no longer holds office.

It is true that the evidence of ACP Mazlan and DSP Aziz reveal that they considered the turning over operation that they conducted on Ummi and Azizan as strange and odd. But it must be remembered that they were instructed by their superiors to carry out the operation. It does not mean that merely because they turned over and neutralized Ummi and Azizan, there is nothing to prevent them from giving evidence against the accused for two reasons. Firstly, no such suggestion was put to them in cross-examination so as to give them an opportunity to counter such an allegation. Secondly, they have not given any evidence against the accused. Their evidence is merely confined to what they did pursuant to instructions from their superiors. If it was felt that their evidence was not true, then their cross-examination ought to have been aimed in that direction which was not done. The relevant part of the evidence of ACP Mazlan and DSP Aziz pertinent to the charges are that they turned over Ummi and Azizan with the result that they gave the denial letters involuntarily. Yet no questions were directed at them in order to challenge their evidence that the letters were not given voluntarily. Thus, the submission on their credibility is a mere conjecture unsupported by any evidence or inferences that can validly be drawn from answers given.

I found that both witnesses gave their answers in a frank and unhesitating manner without being evasive. They were unshaken in cross-examination though I am aware that the fact that a witness is unshaken in cross-examination is not an acid test for his credibility. Their evidence is consistent with the other evidence adduced in the case. I subjected the

A evidence of ACP Mazlan to greater scrutiny in order to ascertain whether he had been influenced by the media publicity of the evidence of other witnesses and by his police statement that he had read before giving evidence. In the circumstances, it is my firm finding that the evidence of ACP Mazlan and DSP Aziz are credible.

B *SAC Musa*

The defence contended that the manner in which SAC Musa carried out his investigation shows that he is an interested witness. It was argued that he had been involved in this case from 15 August 1997 at the request of Dato Mohd Said. He had witnessed conversations relating to investigations into C exhs P16 and P14A, B and C. He participated in the arrest of Ummi and Azizan. He recorded a police statement from the accused on 19 August 1997. He met the accused together with Dato Ismail Che Ros and the Honourable Attorney General on 30 August 1997. He recommended that no further action be taken in the case and met the Honourable Attorney General on 8 September 1997 for the purpose of getting the latter's D approval in respect of his recommendation. In saying that SAC Musa swore highly damaging, vicious and prejudicial affidavits against the accused in Dato Nallakaruppan's case the defence posed this question: Can such an interested and vital witness be expected to conduct an independent, unbiased and above board investigation? He was also involved in the cases E involving Sukma and Munawar. The defence also alleged that SAC Musa did not conduct a proper investigation to reveal the truth in that he did not take any statements from Datin Seri Wan Azizah nor did he take any statements from YAB Prime Minister, Tun Daim Zainuddin and Tan Sri Rahim Thamby Chik to rule out political conspiracy. Without having taken such statements, he said in his evidence that he had ruled out political F conspiracy.

I agree that an investigating officer must be independent and display a high sense of integrity. It is his duty to ensure that innocent persons are not charged and to that extent he must make every effort to discover the truth. With regard to the narration of the defence on the course of action taken by G him from 15 August 1997 to 8 September 1997, I am unable to comprehend the object of slipping it into this area of argument. If it is to show that SAC Musa, by taking those steps, had shown an interest in the case, then it displays a poor understanding of the role of an investigating officer which is to gather information regarding a complaint. That was precisely what SAC Musa did in relation to a complaint handed to him. He H did the acts which formed part of the subject matter of the argument of the defence in the course of carrying out investigation into the complaint. Surely he cannot be penalized for doing what he is duty-bound to do. With regard to the affidavits he swore in the case of Dato Nallakaruppan, I am unable to find anything wrong with it. Being the investigating officer in that case, he was the most appropriate person to answer certain allegations I raised in that case. In any event, it can only be a statement of his findings as of that date and may be affected by other facts that he might discover later. Thus, it is irrelevant to the issues in this case. On the failure of SAC Musa

to record statements from Datin Seri Wan Azizah, YAB Prime Minister, Tun Daim Zainuddin and Tan Sri Rahim Thamby Chik, it is my view that an investigating officer cannot be faulted for not recording statements from persons whom he does not consider to be relevant to his investigation. In his re-examination, SAC Musa explained that he did not record statements from some of these witnesses in view of the minimal role played by them in this case. Be that as it may, failure to record a statement from a person who may even turn out to be material to a case is not fatal. What is fatal is the failure by the prosecution to call such a person as a witness. Such failure may result in an application to draw an adverse inference against the prosecution which was done in this case with respect to some of the persons named.

A consideration of the evidence of SAC Musa, relevant to the issues before the court, will be of more assistance in assessing his credibility than the argument advanced. The sequence of events narrated by him on the action taken by him up to 30 August 1997 is consistent with the other evidence adduced in the case. His evidence on how he came into possession of exhs P17, P18, P20, P21 and P22 has not been challenged by the defence. He said that exhs P17 and P18 were handed to him by Dato Amir Junus. It is of critical importance to note that he said that exhs P20, P21 and P22 were handed over to him by the accused when he met the latter on 2 September 1997. This, it must be remembered, is an element to be proved with regard to the second and fourth charges. Thus, there is internal consistency in his evidence as to how he came into possession of all these exhibits by virtue of his evidence having been not contradicted. The evidence of SAC Musa therefore fits in with the rest of the evidence adduced by the prosecution and the circumstances of the case. The manner in which he gave evidence and his demeanour while doing so are unimpeachable. The vigorous cross-examination that he was subjected to did not result in his credit being shaken, though, I do realize that that alone is not an acid test of his credibility. It is therefore my firm finding that his evidence is credible.

Azizan

It was contended by the defence that Azizan is a thoroughly unreliable witness as he was a pawn in a game played by others with an agenda of their own. In support of this proposition, the defence relied on exhs D25, P17 and the oral evidence of Dato Mohd Said. It was argued that when Dato Mohd Said was asked whether there was a political conspiracy, his answer was: 'I may have said it.' Later he replied in the affirmative. This, said the defence, shows that Azizan was used as a pawn. The prosecution, in reply, said that there was no such evidence. The defence said that the submission is supported by exh D25 and the evidence of Dato Mohd Said who, in answer to a question as to whether there was a political conspiracy, said: 'I may have said it.' Extracts from my notes of evidence of what Dato Mohd Said said on this issue read as follows:

A Question: Did the report you sent to the Prime Minister contain a statement by you to the effect that the allegations were politically motivated?

Answer : I don't quite remember saying anything on this.

Question: In that report that you sent to the Prime Minister did you state that Dato Megat Junid, his wife and a few others were behind a plot to topple the accused?

B

Answer : I doubt very much I said that. ...

Question: In your report do you remember stating that the persons named conspired to topple Dato' Seri Anwar?

Answer : No.

C Question: In your report did you state that Dato Megat Junid, Dato Shamsuddin, Tun Daim and some corporate leaders have conspired to topple Dato' Seri Anwar?

Answer : I don't think I wrote that.

When this portion of the notes of evidence was read to the defence, there was a quick and unexplained change in the argument and the incongruous D reply was that exh P17 read in the light of the evidence of Dato Mohd Said means that he would have told the accused that there was a political conspiracy. What Dato Mohd Said said with regard to this reframed argument runs as follows:

Question: Did you inform the accused that these allegations were politically E motivated?

Answer : I may have said that. I cannot remember. I think it was the accused who told me that the allegations were politically motivated. I am quite sure I did not tell it to the accused.

Again, the submission of the defence is based on evidence which it thinks F the witness may have said when in actual fact he did not say it. I pause to add that a challenge to a witness's evidence must be based on what is on the record and not by way of mere submission (see *Pie bin Chin v PP* [1985] 1 MLJ 234). Cases are decided by the evidence adduced and the inferences to be drawn therefrom and not on what a witness would or ought to have said.

G It was also contended that Azizan is not reliable as he had changed his stand several times and that one such instance is his narration of the events that took place as described in exh P17. There is no evidence to suggest that exh P17 was written voluntarily by Azizan. On the other hand, the available evidence shows that exh P17 is the result of the turning over and H neutralization operation conducted on him. Thus, the proposition that Azizan's credibility is affected by his change of position in exh P17 has no merit as it is not his voluntary statement. I pause to add that SAC Musa denied in his cross-examination that he had told the accused that Azizan had given different versions in his five statements to the police. This goes to enhance the consistency of Azizan's evidence.

I It was also argued that the fact that Azizan went to the Official Residence of the accused to apologize to him operates against him. It was said that there is no evidence to show that he was forced to go there. Dato

Amir Junus said that on 18 August 1997 at about 8.30 pm, he received a telephone call from the accused saying that he wanted to come to the Special Branch office to see Azizan. On being advised against this, the accused asked for Azizan to be taken to his Official Residence. DSP Aziz took Azizan to the accused's Official Residence on that day at 11.45 pm. Azizan said in his evidence that DSP Aziz took him to the accused's Official Residence. The accused scolded him and he apologized to the accused. He said in cross-examination that it is not true that it was he who wanted to meet the accused. He said that he was told by a Special Branch officer that the accused wanted to see him. He said that he apologized to the accused for being involved in this matter. This part of the defence submission is therefore inconsistent with the evidence adduced.

It was also submitted that Azizan is an accomplice as he has admitted that he was sodomized by the accused. As such, the defence contended, he ought not to be believed unless his evidence is corroborated. This submission is irrelevant as the fact in issue is only the allegation made by him and not its truth. Therefore, the question of him being an accomplice on the ground advanced and the resultant need for corroboration does not arise. For the same reason, the fact that Azizan made the allegation five years later is also irrelevant. In any event, he has explained satisfactorily why he decided to make the complaint after five years. Azizan's statement in cross-examination that he was not sodomized by the accused was also canvassed to discredit him. This, although explained by him in re-examination, is also not relevant as I had expunged all evidence relating to the truth or falsity of the allegation.

Exhibit D55 is a statutory declaration affirmed by Azizan and the material parts of it read as follows:

Akuan Bersumpah

(1) Saya, Azizan bin Abu Bakar (No K/P 600814-05-5115) adalah seorang warganegara Malaysia yang cukup umur yang beralamat di No 3402, Pangsapuri Dahlia A, Jalan 3/11, Bandar Baru Selayang, 68100 Batu Caves, Selangor Darul Ehsan.

(2) Saya berikrar dan bersumpah bahawa saya tidak pernah mengenali penulis atau pencetak buku yang bertajuk *50 Dalil Mengapa Anwar Tidak Boleh Menjadi PM* (seterusnya dirujuk sebagai 'buku tersebut').

(3) Saya berikrar dan bersumpah bahawa saya tidak terlibat dalam apa jua cara pun dengan penulisan, percetakan, penjualan dan pengedaran buku tersebut.

(4) Saya berikrar dan bersumpah bahawa saya telah dihubungi oleh pihak polis baru-baru ini berhubung dengan siasatan mengenai buku tersebut. Maka saya telah pergi ke Ibu Pejabat Polis di Bukit Aman untuk membantu siasatan polis. Ketika itu, pihak polis telah merujuk saya kepada bahagian buku tersebut yang berkait dengan saya.

(5) Saya berikrar dan bersumpah bahawa kandungan buku tersebut setakat mana ianya merujuk kepada saya adalah tidak benar sama sekali, dan adalah berniat jahat.

(6) Saya membuat akuan bersumpah ini atas alasan agar kenyataan-

A kenyataan saya mengenai perkara-perkara yang tersebut di atas adalah dirakam sebagai rekod peribadi saya. Saya telahpun memberi kenyataan mengenai perkara-perkara tersebut di atas semasa saya dihubungi oleh pihak polis dalam penyiasatan polis mengenai buku tersebut. Seterusnya, saya akan memberi keterangan bersumpah mengenai perkara-perkara yang termaktub dalam Akuan Bersumpah ini pada sebarang prosiding B kehakiman yang berkaitan dengan perkara buku tersebut kelak.

(7) Saya membuat Akuan Bersumpah ini dengan penuh kepercayaan bahawa segala kandungan dalam akuan ini adalah benar mengikut pengetahuan saya dan saya membuat akuan ini dengan kerelaan hati saya sendiri tanpa paksaan dari sesiapa dan menurut kehendak yang terkandung dalam Akta Akuan Berkanun 1960.

C The defence contended that exh D55 makes Azizan a completely unreliable witness whose evidence cannot be believed. As it was made in accordance with his instructions given to his own lawyer, Sukdev Singh, it must be held to be true with the result that it completely discredits his evidence.

D The evidence on exh D55 started with the prosecution tendering through Azizan a police report (P49) that he had made in connection with the making of the exhibit. When he was asked whether he made exh D55 voluntarily the defence objected to such evidence being adduced as the exhibit had not been produced and that the issue of voluntariness must be decided by the court later for the purpose of possible impeachment of the E witness. I thus ruled that the voluntariness is to be determined at a later stage if the defence chooses to proceed with impeachment of the witness. The defence later said that exh D55 is not in the possession of the accused. However, the defence has a copy of it. It is of interest to note that the defence subsequently produced the original (exh D55) without offering any explanation as how it came into its possession.

F I shall now narrate briefly the events that led to the affirmation of exh D55 by Azizan. He said that in June 1998, he was informed by ASP Zull Aznam that the accused wanted to see him. ASP Zull Aznam took him to the accused's Official Residence. With regard to his conversation with the accused, he said:

G Saya dapati tertuduh ada di dalam bilik tersebut. Tidak ada orang lain di bilik tersebut. Seterusnya, saya berjabat tangan dengan tertuduh dan tertuduh bertanyakan khabar saya dan keluarga. Tertuduh menyuruh saya duduk di kerusi di hadapannya. Lalu dia memberitahu saya yang pihak polis akan membuat penyiasatan ke atas *Buku 50 Dalil* dan tertuduh memberitahu saya yang saya akan dipanggil untuk memberi keterangan kepada polis. Selepas itu, H tertuduh menyuruh saya untuk menafikan kepada pihak polis tentang apa yang berlaku. Saya memberitahu kepadanya yang saya tidak mengenali penulis buku dan tidak membaca buku tersebut iaitu *Buku 50 Dalil*. Bagi pemahaman saya, ianya ada berkaitan dengan penyiasatan polis sebelum ini yang mana saya telah membuat satu surat memohon maaf dan satu kenyataan umum pada bulan Ogos 1997. Pertemuan lebih kurang 5–10 minit dan saya I terus pulang ke rumah saya. Dalam bilik itu, saya difahamkan supaya saya membuat penafian yang berkaitan dengan saya diliwat dan menulis surat pengakuan bersumpah yang tandatangani bertarikh 5 Ogos 1997.

With regard to the circumstances in which he made exh D55, Azizan said in cross-examination:

> Pada akhir Jun 1998, apabila saya berjumpa peguam Sukdev Singh, itulah pertama kali saya berjumpa dengannya. Pada pertama kali saya berjumpa peguam Sukdev Singh, saya tidak memberi apa-apa arahan kepadanya kerana saya tidak pernah melantiknya. Semasa saya jumpa peguam Sukdev Singh, Rahim King yang banyak bercakap dan saya kadang-kadang bercakap. Apabila Sukdev Singh bertanya tempat kerja saya dan adakah saya membaca *Buku 50 Dalil*, saya katakan bahawa saya tidak ada membaca atau melihat *Buku 50 Dalil*.

When Azizan met Sukdev Singh for the second time, one MaAmin was with him. Azizan told Sukdev Singh that he has to go to Bukit Aman to give a statement. Both Sukdev Singh and MaAmin took him to Bukit Aman and then left. Azizan said:

> Saya tidak mengajak En Sukdev tetapi dia ingin mengikut saya ke Bukit Aman. Saya tidak meminta Sukdev mengikut saya ke Bukit Aman.

With regard to his third visit to the office of Sukdev Singh, Azizan said:

> Kali ketiga saya berjumpa Sukdev ialah selepas saya pergi ke Bukit Aman setelah diberitahu oleh Rahim King yang saya dikehendaki membuat satu akuan bersumpah seperti yang diarahkan oleh bossnya, iaitu tertuduh. Saya sendiri tidak tahu sama ada tertuduh ada menyuruh Rahim King membuat apa-apa. Tetapi itulah apa yang diberitahu oleh Rahim King, iaitu dia menyuruh saya membuat satu laporan polis dan akuan bersumpah. Saya tidak membuat laporan polis. Rahim King memberitahu saya, sebelum membuat laporan polis saya dikehendaki berjumpa peguam Sukdev dahulu. Kali ini, saya ke pejabat Sukdev bersama MaAmin setelah diarahkan oleh Rahim King. Saya ada berjumpa dan bercakap dengan Sukdev Singh pada kali ketiga ini. Saya ingat ini adalah pada minggu terakhir bulan Julai 1998. Saya ada berjumpa peguam Sukdev secara seorang sahaja setelah saya diberitahu oleh MaAmin dan peguam Sukdev yang saya terpaksa menandatangani akuan bersumpah yang telah siap dibuatnya. Saya berjumpa Sukdev seorang iaitu pada 10 Ogos 1998. Pada mulanya, saya tidak mahu menandatangani akuan bersumpah tersebut kerana terdapat ayat pada akuan tersebut yang saya memang menandatangani perakuan bersumpah saya. Lalu peguam Sukdev membuat pindaan ke atas ayat itu dan saya masih tidak mahu menandatanganinya kerana saya telah dipanggil ke Bukit Aman untuk memberi keterangan. Lalu peguam Sukdev mengatakan kepada saya, iaitu akuan bersumpah ini hanyalah berkaitan *Buku 50 Dalil* sahaja. Saya masih enggan. Peguam Sukdev masih mengatakan bahawa ianya hanya berkaitan dengan *Buku 50 Dalil*. Pada masa itu, perasaan takut saya kerana sering dihubungi oleh MaAmin dan Rahim King. Saya merasa takut dan kerja-kerja saya terganggu. Saya bersetuju bahawa pindaan ada dibuat kepada surat sumpah itu. Pindaan itu dibuat kerana saya tidak bersetuju atau puas hati dengan ayat tersebut. Seingat saya, pindaan dibuat adalah kepada para 5. Itu sahaja pindaan yang diminta dan dibuat. Sebelum saya menandatangani saya ada membaca para 1, 2, 3 dan 4. Saya tidak minta En Sukdev meminda para 1, 2, 3 dan 4. Saya ta' ingat ada berapa para di surat sumpah itu sebab saya tidak diberikan salinan. Saya faham Bahasa Malaysia tetapi saya perlu penjelasan yang lebih daripada peguam tersebut. Saya ada minta penjelasan dari peguam. Penjelasan yang diberi ianya hanyalah berkaitan dengan *Buku 50 Dalil* sahaja, katanya. Saya boleh baca Bahasa Malaysia.

A Setelah saya dibawa oleh peguam Sukdev Singh ke pejabat seorang Pesuruhjaya Sumpah di Jalan Masjid India yang saya tidak tahu namanya, saya menandatanganinya setelah merasa takut dan terpaksa. Saya tidak memberitahu pesuruhjaya sumpah bahawa saya dipaksa membuat akuan tersebut oleh kerana peguam Sukdev ada bersama. Pada hari itu, saya seorang sahaja pergi ke pejabat peguam Sukdev dari pejabat saya di Alor Gajah dengan B memandu kereta syarikat. Sebelum menandatangani akuan berkanun, saya telah membaca semua kandungannya di pejabat peguam Sukdev. Setelah membaca akaun berkanun, itu saya tidak minta Sukdev membuat apa-apa pindaan lagi. Saya juga tidak memberitahu apa-apa yang terkandung di dalam akuan berkanun tersebut kerana pesuruhjaya sumpah banyak bertanya kepada peguam Sukdev. Saya tidak memberitahu pesuruhjaya sumpah bahawa apa-apa yang terkandung di dalam akuan berkanun itu adalah tidak betul atau C tidak benar kerana pesuruhjaya sumpah banyak bertanya kepada Sukdev. Pesuruhjaya sumpah ada minta kad pengenalan saya. Saya menandatangani akuan berkanun itu di hadapan pesuruhjaya sumpah dan peguam Sukdev. Pesuruhjaya sumpah tidak menanyakan saya apa-apa sebelum saya menandatangani akuan berkanun itu. Saya tidak bersetuju bahawa keterangan saya yang pesuruhjaya sumpah tidak menanyakan apa-apa sebelum saya D menandatangani akuan berkanun tersebut adalah bohong atau tidak benar. Saya ta' ingat pesuruhjaya sumpah ini. Seingat saya, dia seorang Cina dan berkaca-mata. Saya tidak membuat apa-apa pengaduan. Ini kerana pesuruhjaya sumpah ini tidak melakukan apa-apa kesalahan.

As to the truth of the contents of exh D55, Azizan said:

E Saya tidak ingat kandungan akuan berkanun itu sekarang. Seingat saya, akuan berkanun itu tidak benar. Terdapatnya ayat yang menafikan saya menandatangani akuan bersumpah yang saya tandatangani pada 5 Ogos 1997. ... Saya hanya membuat P49 pada 16 September 1998 kerana saya telah memikirkan yang tertuduh tidak berkuasa lagi kerana saya telah dipaksa untuk menandatangani akuan berkanun bertarikh 10 Ogos 1998 F adalah tidak benar dan tanpa kerelaan saya.

On being cross-examined as to whether all the contents of exh D55 are untrue, Azizan said:

Seingat saya, alamat rumah, nama saya adalah benar. ... Para 1 adalah betul. Para 2 pun betul. Para 3 pun betul. Para 4 pun betul. Para 5 tidak betul. Saya G tidak bersetuju bahawa para 5 adalah betul. Berkenaan dengan para 6, saya ada memberi kenyataan semasa dihubungi oleh pihak polis. Para 6 adalah betul. ... Saya ada menyuruh peguam Sukdev meminda para 5 tetapi beliau mengatakan biarkanlah ayat itu begitu sahaja. Saya setuju kerana saya merasa takut dan pada masa itu fikiran saya terganggu. Perasaan takut lebih mendalami jiwa saya. Saya tidak bersetuju bahawa apabila saya katakan H kandungan para 5 tidak benar itu adalah pembohongan oleh saya. ... Saya tidak bersetuju bahawa saya telah membayar RM10 bagi akuan berkanun ini. Peguam Sukdev yang membayarkannya. Saya tidak setuju saya yang membayar RM10 itu. Saya tidak setuju tiada siapa yang menakutkan saya untuk membuat akuan berkanun ini. Saya tidak setuju bahawa akuan berkanun ini disediakan oleh Sukdev atas arahan-arahan saya. Saya tidak bersetuju bahawa para 5 di IDD 54 telah disediakan oleh peguam Sukdev atas I arahan saya. Saya telah dipaksa untuk menandatangani IDD54 setelah sering dihubungi oleh MaAmin, Rahim King kerana mereka adalah orang-orang suruhan tertuduh.

On being re-examined as to the contents of exh D55, Azizan said: A

> Pada masa saya menandatangani D55, *Buku 50 Dalil* tidak dibaca kepada saya. Juga tidak dibaca sebelumnya. Sebelum saya menandatangani D55, saya juga tidak membaca *Buku 50 Dalil* ini. Pada sekitar waktu saya menandatangani D55, *Buku 50 Dalil* itu tidak ditunjukkan kepada saya. Sehingga hari ini, saya tidak pernah membaca *Buku 50 Dalil.* B

Even if exh D55 was prepared by Sukdev Singh on the instructions given by Azizan, it cannot be held to be true if there is evidence to suggest that it may not be so. In the light of the police report made by Azizan and the evidence he gave in court about being pressured to swear the statutory declaration by Rahim King and MaAmin, the defence carries the burden of establishing that it was executed voluntarily being the party which has introduced it in C evidence. On the available evidence, I am unable to rule that exh D55 was affirmed by Azizan voluntarily. His evidence shows that he affirmed it under pressure. It follows that exh D55 is not entitled to any weight in the absence of any further evidence. Be that as it may, it must be observed that exh D55 makes no specific reference to exh P14C. Paragraph 5 of exh D55 only D states that any reference in *Buku 50 Dalil* to Azizan is not true. Azizan said in re-examination that when he swore exh D55, he had not read *Buku 50 Dalil.* Thus, there can be no question of para 5 of exh D55 referring to exh P14C with the result that there is no denial of Azizan signing it. In substance, exh D55 is only a denial by Azizan of any involvement of him with *Buku 50 Dalil.* It does not affect his evidence on exh P14C in any way. E It follows that even if I were to hold that exh D55 was sworn by Azizan voluntarily, it does not conflict with his oral evidence in court. Furthermore, even if it can be argued that para 5 of exh D55 refers to exh P14C, Azizan's clear oral evidence that he signed the letter was not challenged in cross-examination thereby leaving two versions for the court to consider. In such circumstances, the court is entitled to act on the oral F evidence given in court if satisfied that it is true (see *Tan Chow Soo v Ratna Ammal* [1969] 2 MLJ 49). In that event, I would accept the oral evidence of Azizan as it is consistent with the evidence of other witnesses.

It is significant to remember that the important aspects of the evidence of Azizan pertinent to the charges are that he signed exh P14C and that he G was subjected to the turning over process by ACP Mazlan and DSP Aziz pursuant to which he wrote exhs P17 and P20 involuntarily. The fact that he signed exh P14C was not challenged except for the submission that he did not narrate all its contents to Ummi. I have already dealt with that issue. However, there was no challenge to his evidence on how he came to write exhs P17 and P20. The bulk of his cross-examination was on collateral H matters from which he came out unscathed. It must also be observed that Azizan was subjected to several days of cross-examination which he withstood very well. I do realize that the fact that a witness is unshaken in cross-examination is not an acid test for his credibility. Azizan's evidence is consistent with itself and with the other evidence adduced by the prosecution. Having also taken into account the manner in which he gave I his answers and his demeanour while giving evidence, it is my firm finding that his evidence is credible.

Ummi

The principal line of attack against the credibility of Ummi by the defence was that she has a motive for doing what she did. It was contended that she was motivated by promises to send exh P14A, B and C. It was alleged that she said she could not remember whether she got any benefits. The defence said that this amounted to bribery and corruption. The prosecution objected to this part of the submission as it is based on an extract from tampered tapes of which fact the defence was aware. I ordered that there shall be no submission on the taped conversation as they are not in evidence before the court. The submission again continued on a similar line. It was said that she had a motive to carry out her scheme. She arranged for Dr Restina to meet Azizan and also arranged for him to see Tan Sri Rahim Thamby Chik. She took Azizan to see a lawyer. Thus, she had a hand in everything from the beginning. As such, she would do everything within her power to influence Azizan to lie. Exhibit P18 reveals that there was a political conspiracy and that she was a part of it. Thus, she will be obliged to lie as she is an interested witness. This part of the submission is not supported by the evidence nor was there evidence from which such an inference could be drawn. In any event, even if there was a conspiracy, it is irrelevant as the fact in issue is whether she had written exh P14A, B and C and not her motive for doing so.

In her cross-examination, several other questions were directed at her in order to damage her credibility. She denied that she had been disowned by her father; that she had sold her father's Mercedes Benz motor car without his permission; that she had been arrested for 'khalwat' and that she had a lot of debts. She denied them. She said that she could not remember whether she had written a letter to her father saying that she had obtained a contract worth millions of ringgit. She denied that she had written love letters to the accused and that she was jealous of Shamsidar. She said that she came to know Khairuddin bin Abu Hassan only recently. She also denied a conversation that she allegedly had in the toilet with one Ziela Jalil. She also denied that she wrote exh P14A, B and C so that Azmin will divorce his wife Shamsidar and that she wrote it without the knowledge of her parents. She denied that she confessed to her father and her brother Azmin nor anybody else that she wrote exh P14A, B and C for money; that she is looking for ways and means of getting the balance due to her and that Azizan will get a first payment of RM1m. She also denied that she was made use of by corporate and political leaders. I do not consider her answers to be relevant as what is in issue is only the fact of her making the allegations and not her motive for doing so. As this line of cross-examination goes to Ummi's credit, the answers she gave are final and she cannot be contradicted on them pursuant to s 153 of the Evidence Act 1950 which I shall consider in a later part of the judgment.

It was then argued that the statutory declaration (exh D90) that she affirmed shows that she is not the author of exh P14A, B and C as she has denied writing it and that it has the effect of demolishing her evidence. Exhibit D90 reads as follows:

Statutory Declaration

I, Cik Ummi Hafilda bte Ali (NRIC No A0793275) of No 1E, Jalan Seladang, Kg Klang Gate Baru, Setapak, Kuala Lumpur do hereby and sincerely declare that:

(1) I am not involved nor have anything to do whatsoever with the publication of the book *50 Dalil Mengapa Anwar Tidak Boleh Jadi Perdana Menteri* nor with the author of the book. I had not in anyway contributed to nor colluded with its publication although some elements are now trying to implicate me in order to give credibility to the contents of the book. I do not know the author of the book and have no contact or communication with him directly or indirectly.

(2) By reason of the matters stated above, I deny I had supplied the letter appearing in the book purportedly written by me to YAB Perdana Menteri. Further, the photograph in which I appeared together with two others which was published in the book was not supplied by me although I remember giving a copy of the letter and the photograph to the police sometime in August 1997.

(3) I also deny that I have anything to do with the circulation of the letter which I am alleged to have written to the YAB Perdana Menteri. I am not the originator of the 'surat layang' and have no idea of the identity of the person or persons behind it.

(4) I hope that my name will not be dragged into this shameful episode as any matter concerning my family members should be decided and be resolved within the family as it is not a matter for public discussion. I trust my wishes will be respected.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960.

When she was cross-examined on the circumstances in which she affirmed exh D90, she said:

Saya ada membuat surat pengakuan berkanun pada 23 Jun 1998. Ketika saya menandatangani SD itu, ianya berlaku dalam keadaan terdesak. Berdasarkan pada SD itu, saya menganggapnya adalah benar (saksi dirujuk kepada SD). Inilah SD yang dibuat oleh saya. I do not have the original. Saya tidak pasti siapa memegang salinan asal ini (salinan asal dirujuk kepada saksi). Ini adalah salinan asal—ditanda sebagai D90 (saksi dirujuk kepada para 3 di D90). I have stated this there. Ini ditulis oleh peguam. Maksud saya di para 3, saya tidak terlibat sama sekali dengan surat yang ditulis kepada PM yang terdapat di *Buku 50 Dalil*. With regard to the second sentence in para 3 maksud saya surat layang yang dimaksudkan adalah 'Surat Talqin Untuk Anwar' dan saya sendiri tidak mengetahui identiti orang di belakang surat itu. Peguam yang menyediakan SD ini adalah En Yeoh (saksi dirujuk kepada para 2 di D90). Ini adalah benar. Saya perlukan sedikit penjelasan. Saya tidak pernah membekalkan sebarang surat ataupun gambar kepada penulis Khalid Jafri tetapi ini tidak bermakna saya menafikan kandungan surat asal yang telah saya hantar kepada YAB PM.

Q: What do you mean by 'purportedly' in para 2?

A: Maksud yang kononya surat yang ditulis saya kepada YAB PM kerana saya tidak mengetahui sama sekali kandungan surat yang dimuatkan oleh Khalid Jafri dalam *Buku 50 Dalil*. Buku itu saya tidak terlibat langsung.

(Saksi dirujuk kepada para 4.) Ini adalah benar.

In re-examination, she said:

> (Saksi dirujuk kepada D90.) Saya ada didesak oleh abang saya Azmin melalui Dato Sng Chee Hua untuk membuat ini.

A peculiar feature of the manner in which exh D90 was tendered in evidence was that Ummi was first asked whether she had the original statutory declaration in her possession and whether she knew who had the original. When she replied in the negative, the original was suddenly shown to her by the defence. She explained that with regard to the first sentence in para 2 and 3 of exh D90, she was not involved in the contents of the letter as appearing in *Buku 50 Dalil*. It was submitted by the defence that the word 'purportedly' in para 2 of the exhibit shows that Ummi did not write exh P14A, B and C. She said that the word was used to refer to the letter appearing in *Buku 50 Dalil* of which she had no knowledge. Be that as it may, her explanation arises for consideration only if exh D90, a defence exhibit, is proved to have been affirmed voluntarily. The evidence of Ummi shows that she affirmed it under pressure. Thus, on the available evidence, I am unable to rule that it was affirmed voluntarily. It follows that exh D90 is not entitled to any weight in the absence of any further evidence. Even if I were to hold that exh D90 was sworn by Ummi voluntarily, it does not alter her oral evidence in any way as the contents of exh D90 only relate to *Buku 50 Dalil* and not to exh P14A, B and C. In any event, it must be noted that her oral evidence that she signed exh P14A and had sent it together with exh P14B and C was not challenged in cross-examination. If, therefore, I were to take exh D90 into account to say that exh P14A, B and C was not written by her, there would be two versions for the court to consider, that is to say, one as contained in her oral evidence and the other in exh D90. In such circumstances, the court is entitled to act on the oral evidence given in court if satisfied that it is true (see *Tan Chow Soo v Ratna Ammal* [1969] 2 MLJ 49). In that event, I would accept the oral evidence of Ummi as it is consistent with the evidence of other witnesses.

It must be observed that the salient parts of the evidence of Ummi relevant to the charges are that she prepared exh P14A, B and C and that she was subjected to the turning over process by ACP Mazlan and DSP Aziz pursuant to which she wrote exhs P18, P21 and P22 voluntarily. She denied a defence suggestion that she did not draft exh P14A, B and C and that it was drafted by Dato Seri Megat Junid. Exhibit P38A–V is a handwritten draft by her of exh P14A, B and C thus supporting her evidence that she drafted them. Even if they were drafted by someone else the fact remains that they contain allegations made by her. It was never put to her that she did not sign and send exh P14A and B together with P14C. She denied a defence suggestion that she wrote exhs P18 and P22 voluntarily. In my opinion Ummi's evidence is consistent with itself and with the other evidence adduced by the prosecution. She was not shaken in cross-examination though I am aware that it is not an acid test for credibility. She gave her answers very confidently. Having also taken into account her demeanour while giving evidence it is my firm finding that her evidence is credible.

(XI) CORROBORATION

It was contended by the defence that the evidence of the accomplices must be corroborated.

It was held in *R v Mullins* (1848) 3 Cox CC 526 that corroboration does not mean that there should be independent evidence of that which the accomplice relates, otherwise the accomplices' testimony would be unnecessary. In the celebrated case of *The King v Baskerville* [1916] 2 KB 658, Lord Reading CJ said that what is required is some additional evidence rendering it probable that the story of the accomplice is true, and that it is reasonably safe to act upon his statement. His Lordship said at p 667:

> We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

The word 'implicate' does not necessarily mean 'incriminate' or 'inculpate'; it may mean only 'involve' (see *R v Kerim* [1988] 1 Qd R 426). Ong AgCJ (Malaya) said in *Brabakaran v PP* [1966] 1 MLJ 64 that corroborative evidence is not necessarily restricted to the oral evidence of an independent witness. It may be circumstantial as well as direct (see *R v Tripodi* [1961] VR 180). In *Doney v The Queen* (1990) 171 CLR 207, it was held that consistent with its role of confirming other evidence rather than amounting itself to evidence which necessarily leads to conviction, the corroborative evidence does not need to be proven beyond reasonable doubt.

I shall consider in a later part of the judgment whether the evidence of Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz are corroborated.

I shall now consider the reasons why I held that the prosecution had made out a prime facie case against the accused in respect of the charges preferred against him.

THE INGREDIENTS TO BE PROVED BY THE PROSECUTION

Section 2(1) of Ordinance No 22, under which the four charges against the accused have been preferred, reads as follows:

> Any Member of the administration or any Member of Parliament or the State Legislative Assembly or any public officer, who while being such a Member or officer commits any corrupt practice shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding fourteen years or to a fine not exceeding twenty thousand ringgit or to both such imprisonment and fine.

In order to prove the charges against the accused, the prosecution has to establish two ingredients, that is to say, that he was a Member of the administration at the material time and that while being such Member he committed a corrupt practice.

A The first ingredient to be proved by the prosecution is common to all the charges. The second ingredient involves proof of the manner in which the accused used his position for his advantage as enumerated in the four charges. They are as follows:

B *First Charge*

(a) That the accused directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II to obtain a written statement from Azizan bin Abu Bakar denying his allegation of sodomy as contained in his 'Pengakuan Bersumpah' dated 5 August 1997 which they obtained as directed,

C

(b) for the purpose of saving himself from embarrassment.

Second Charge

(a) That the accused directed Dato Mohd Said bin Awang, Special
D Branch Director and Amir bin Junus, Special Branch Deputy Director II to obtain a written public statement from Azizan bin Abu Bakar denying the allegation of sodomy as contained in his 'Pengakuan Bersumpah' dated 5 August 1997 which they obtained as directed,

(b) which he used for the purpose of protecting himself against any
E criminal action.

Third Charge

(a) That the accused directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director
F II to obtain a written statement from Ummi Hafilda bte Ali denying the allegation of sexual misconduct and sodomy as contained in her confidential report entitled 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5 August 1997 which they obtained as directed,

(b) for the purpose of saving himself from embarrassment.

G

Fourth Charge

(a) That the accused directed Dato Mohd Said bin Awang, Special Branch Director and Amir bin Junus, Special Branch Deputy Director II to obtain a written public statement from Ummi Hafilda bte Ali
H denying the allegation of sexual misconduct and sodomy as contained in her confidential report entitled 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5 August 1997 which they obtained as directed,

(b) which he used for the purpose of protecting himself against any
I criminal action.

I shall now deal with the two ingredients:

(I) MEMBER OF THE ADMINISTRATION

The Law

Section 2(2) of Ordinance No 22 provides that the expression 'Member of the administration' ('the phrase') has the meaning assigned to it in art 160(2) of the Federal Constitution ('art 160(2)'). The phrase is defined in art 160(2) in the following manner:

> 'Member of the administration' means, in relation to the Federation, a person holding office as Minister, Deputy Minister, Parliamentary Secretary or Political Secretary and, in relation to a State, a person holding a corresponding office in the State or holding office as member (other than an official member) of the Executive Council; ... .

Thus, a Federal Minister is a Member of the administration within the meaning of s 2(1) of Ordinance No 22. As all four charges refer, inter alia, to the office of Deputy Prime Minister held by the accused, it is necessary to determine whether this office comes within the scope of the word 'Minister' as appearing in the meaning assigned to the phrase by art 160(2). This would depend on whether it is permissible to extend the meaning of the word to include the office of the Deputy Prime Minister, and for that matter, that of the Prime Minister.

The first observation that I would like to make is that the relevant part of art 160(2) which defines the phrase must be construed as if it were a part of Ordinance No 22 as it has been adopted by the latter as its definition section for the purpose of defining the meaning of the phrase. Thus, the ordinary rules relating to statutory interpretation would become relevant insofar as the application of art 160(2) to Ordinance No 22 is concerned. It is a fundamental rule of statutory interpretation that in interpreting a statute the intention of Parliament must first be ascertained. If the words of a statute are in themselves precise and unambiguous, the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further (see *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue (Housing and Development Board)* [1992] 1 SLR 425). In *Hongkong Bank (M) Bhd v Raja Letchumi a/p Ramarajoo & Ors* [1996] 2 MLJ 34, Gopal Sri Ram JCA said in the Court of Appeal that ever since *Heydon's case* (1584) 76 ER 637, courts are obliged to look at the historical background of a statute in order to ascertain the purpose for which it was enacted. However, when a statute says that a word or a phrase shall mean certain things, the definition is a hard and fast definition and no other meaning can be assigned to it (see *Re The Agricultural Holdings (England) Act, 1883*; *Gough v Gough* [1891] 2 QB 665, *Bristol Trams & Carriage Co v Bristol Corpn* (1890) 59 LJQB 441). Be that as it may, art 160(2) itself states in unmistakable terms that the meanings it gives to expressions are applicable '... unless the context

otherwise requires ...'. This means that the meaning given to an expression by art 160(2) may be modified to suit the context in which it is used in the body of the text. The word 'context' means not only the part which immediately precedes or follows a section, but the whole Act (see *Jaques v Stafford* (1890) 11 LR (NSW) 127). It is a rule of construction that where a statutory meaning is given to a word and the context shows that it is to have a different signification from the defined meaning, the latter meaning should be departed from to the extent that its use or context renders necessary (see *Re Jennings Gould and SA Superannuation Fund Board* [1945] SASR 50). It has also been held that an interpretation section of an Act must yield to a context in the enacting portion of the statute (see *Stevens v Colonial Sugar Refining Co Ltd* (1920) 28 CLR 330). Where an ambiguity arises as to whether the legislature has used a general expression in its narrower or in its wider sense, the court will place that meaning upon the expression which will most effectually carry out the object of the section. In such cases, it becomes necessary to examine the context, the subject matter, and the object and purpose of the enactment as disclosed by its provisions (see *Bank of Australasia v Hall* (1907) 4 CLR 1514). As an illustration of a situation where the assigned meaning to a word was modified, I refer to *PP v Datuk Tan Cheng Swee & Ors* [1979] 1 MLJ 166 where the accused was charged under s 2(1) of Ordinance No 22 for having committed a corrupt practice while being a public officer. With regard to the meaning of the expression 'public officer', s 2(2) of Ordinance No 22 provides that it has the meaning assigned to it in s 2 of the Prevention of Corruption Act 1961. At the High Court, Ajaib Singh J (as he then was) said (at pp 168–169) that by assigning a specific meaning to the term 'public officer' the inference is that the legislature intended that the term should mean only that as defined in s 2 of the Prevention of Corruption Act 1961 and nothing else and held that the accused was not a public officer as prescribed. In deliberating over this stand taken by the learned judge, the Federal Court, on appeal, referred to *Dyke v Elloitt, The Gauntlet* (1872) LR 4 PC 184 where James LJ said (at p 191):

> No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.

The Federal Court adopted this view in the interpretation of a statute and held that the accused was a public officer within the meaning of the definition section.

In the case at bar, it must be observed that the object of Ordinance No 22 is wide so as to bring to book corrupt politicians and public officers who abuse their public positions or office for their pecuniary or other advantage (see *Haji Abdul Ghani bin Ishak & Anor v PP* [1981] 2 MLJ 230). In this regard, I also refer to *PP v Datuk Tan Cheng Swee & Ors* [1979] 1 MLJ 166 where Chang Min Tat FJ in speaking for the Federal Court said (at p 178):

> ... The Emergency (Essential Powers) Ordinance No 22 of 1970 is enacted to widen the campaign against bribery and corruption and now makes a penal offence any practice that comes within the definition of corrupt practice in the Ordinance, which previously would have escaped the net of the Penal Code and the Prevention of Corruption Act.

It cannot be disputed that the definition of the phrase in art 160(2) refers to high ranking politicians. The Prime Minister and the Deputy Prime Minister are the number one and number two politicians respectively in the country. To give a literal meaning to the word 'Minister' would lead to the absurd and ludicrous position of excluding the captains of politics from the tentacles of Ordinance No 22 and thereby defeat the very object and purpose for which it was enacted. Bearing in mind, therefore, the object of Ordinance No 22 and the context in which the word 'Minister' appears in the definition of the phrase in art 160(2), it is my view that the word is used in its general sense and that it must be given an extended meaning in its application to Ordinance No 22 to include the Prime Minister and the Deputy Prime Minister. The view that I have taken is further supported by s 3 of the Interpretation Acts 1948 and 1967 which defines the word 'Minister' in the following terms:

> 'Minister' means, subject to s 8(2), a Minister of the Government of Malaysia (including the Prime Minister and a Deputy Minister).

The reference to a 'Deputy Minister' in the section I have just referred to would include a Deputy Prime Minister on the principles that I have discussed earlier.

The evidence adduced

The prosecution must establish that the accused was the Deputy Prime Minister and Minister of Finance at all material times. In order to prove this ingredient, the prosecution called as its witness Dato Alias bin Ali, the Deputy Secretary General in the Prime Minister's Department. His duties include assisting the Chief Secretary in handling the weekly cabinet meetings and the processing of appointments to administrative and constitutional posts. He knows the accused personally. In support of his statement that the accused was the Deputy Prime Minister at the material time, he tendered in evidence the appointment letter appointing the accused to that post signed by YAB Prime Minister (exh P30); his letter of appointment as a Federal Minister signed by DYMM Yang Di-Pertuan Agong (exh P31); and a copy of Government Gazette PU (A) 203 dated 1 June 1995 referring to his appointment as Deputy Prime Minister and

A Minister of Finance (exh P32) and PU (A) 118 dated 24 March 1994 referring to his appointment as Deputy Prime Minister (exh P38). Dato Alias bin Ali said that the accused held the posts till 2 September 1998. This evidence was not challenged by the defence. As a matter of fact, the defence conceded in its submission that it is a fact that the accused was the Deputy Prime Minister and Minister of Finance at the material time and that this B ingredient is not challenged.

I was therefore satisfied that the prosecution had adduced prima facie evidence to show that the accused was the Deputy Prime Minister and Minister of Finance at the material time and, thus, a Member of the adminsitration within the meaning of s 2(2) of Ordinance No 22.

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(II) WHILE BEING SUCH MEMBER COMMITS A CORRUPT PRACTICE

This ingredient involves proof of two elements by the prosecution. They are:

(i) the manner in which the accused used his position; and

D (ii) the advantage that he obtained.

I shall deal with the two elements separately.

The manner in which the accused used his position

E *(1) The Law*

This ingredient is governed by the phrase 'corrupt practice' which is defined in s 2(2) of Ordinance No 22 in the following terms:

> 'Corrupt practice' means any act done by any Member or officer referred to in sub-s (1) in his capacity as such Member or officer, whereby he has used F his public position or office for his pecuniary or other advantage; and without prejudice to the foregoing, in relation to a Member of a State Legislative Assembly includes any act which is contrary to the provision of sub-s (8) of s 2 of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution of a State.

G In this regard, I also refer to *PP v Dato Haji Mohamed Muslim bin Haji Othman* [1983] 1 MLJ 245 where Hashim Yeop A Sani J (as he then was) said (at p 247):

> ... From the definition of 'corrupt practice', it is clear that what the law aims to strike at is any act done by a Member of the administration or public officer whereby he has used his public position or office for his pecuniary or other H advantage. In other words, the law aims to strike at every act of a Member of the administration or public officer which amounts to an abuse of his public position or office for his personal advantage.

A corrupt practice within the meaning of s 2(1) of Ordinance No 22 therefore occurs when a Member or officer uses his public position or office I for his pecuniary or other advantage.

A matter of concern is whether the words '... any act done by any Member ... in his capacity as such Member, whereby he has used his public

position or office for his pecuniary or other advantage ...' appearing in the definition of the expression 'corrupt practice' in s 2(2) of Ordinance No 22 mean that the act done must be one that is connected to the duties of the Member, that is to say, whether it must have a bearing to the discharge of his duties as such Member. It was the contention of the defence that the words '... in such capacity ...' refer to a capacity to exercise power and that, on the facts of this case, in order for the accused to use his public position for his advantage, he must have had authority over the Special Branch. If he did not have that authority, he would not have had the power to direct the Special Branch officers on the performance by them of their duties. They must, therefore, have been responsible to the accused in his capacity as Deputy Prime Minsiter and Minister of Finance in order for him to exercise authority over them. The prosecution in its reply said that s 2(2) of the Ordinance No 22 is drafted in such a way that it is not a requirement of the section that the accused must do an act in connection with his own duties as Deputy Prime Minister or Minister of Finance in order to be liable. This interpretation is in accord with the expression 'any act' in s 2(2) which must be given a very wide and not a restrictive interpretation with the result that it covers any act of an accused person depending on the circumstances of each case. In support of this argument, reference was made to *Dhaneswar Narain Saxena v Delhi Administration* AIR 1962 SC 195, *Dalpath Singh v State of Rajasthan* AIR 1969 SC 17, *Kewal Krishnan v State* 1975 Cr LJ 1963 and *Attorney General of Hong Kong v Ip Chiu & Anor* [1980] 2 WLR 332.

In interpreting the ambit of the words in question, I find it necessary to travel to other jurisdictions which have legislative provisions similar to s 2(1) of Ordinance No 22 in the absence of local authorities on the point. I shall first refer to s 5 of the Indian Prevention of Corruption Act 1947, the material parts of which read as follows:

> (1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty—
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) If he by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable things or pecuniary advantage.
>
> (2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years or with the fine or both.

It must be observed that s 5(1)(d) read with s 5(2) makes specific reference to abuse of position in the discharge of duty of a public servant. In *State of Ajmer v Shivji Lal* AIR 1959 SC 847, a government teacher obtained money from a person for procuring a job in the Railway Running Shed as a result of which he was charged for an offence under s 5. It was held that the mere receipt of money by a public servant even if it be by corrupt means is not sufficient to make out an offence under s 5(2) read with s 5(1)(d) as the words 'by otherwise abusing his position' read with the words 'in the

A discharge of his duty' appearing in the section make it quite clear that an offence under the section requires that the public servant should misconduct himself in the discharge of his own duty and that since it is not part of the duty of a government teacher to make appointments in a Railway Running Shed, there would be no question of his committing misconduct in the discharge of his duty when he takes money for procuring a job for a B person in the Railway Running Shed. As the Supreme Court said:

> The offence under this provision consists of criminal misconduct in the discharge of his duty. In order, therefore, that this offence is committed, there should be misconduct by the public servant in the discharge of his duty. In other words, the public servant must do something in connection with his own C duty and thereby obtain money for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. If a public servant takes money from a third person in order to corrupt some other public servant and there is no question of his misconducting himself in the discharge of his own duty, that action may be an offence under s 161 of the Indian Penal Code but would not be an offence under s 5(2) read with s 5(1)(d) of the Prevention of Corruption Act. The essence of an offence under s 5(2) read with s 5(1)(d) is D that the public servant should do something in the discharge of his own duty and thereby obtain any valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. The words 'by otherwise abusing his position' read along with the words 'in the discharge of his duty' appearing in s 5(1)(d) make it quite clear that an offence under that section requires that the public servant should E misconduct himself in the discharge of his own duty. In the present case, the accused was a teacher and it was no part of his duty to make appointments in the Running Shed at Abu Road. There would, therefore, be no question of his committing misconduct in the discharge of his duty when he took money for procuring a job for Prem Singh in the Running Shed. So far, therefore, as the charge under s 5(1)(d) is concerned, we are of opinion that there was no F question of the accused misconducting himself in the discharge of his own duty in the circumstances of this case and it must fail.

This view, however, did not find favour with a different panel of the Supreme Court in *Dhaneswar Narain Saxena v Delhi Administration* AIR 1962 SC 195. In that case, the appellant was an Upper Division Clerk in G the office of the Chief Commissioner of Delhi. He had come to know one Ram Narain, who was the main prosecution witness in the case and who was a fireman attached to the Delhi Fire Brigade. Ram Narain had for a long time been anxious to obtain a licence for a double-barrelled shot-gun. It was alleged that he had sought the assistance of the appellant who had nothing to do with the issuing of licences for firearms which is done by the office of H the Deputy Commissioner, Delhi. The prosecution case, which rested mainly on the evidence of Ram Narain, was that he had submitted two applications during the year 1953 for the purpose of obtaining the licence with the assistance of the appellant. Those applications did not produce any result. In 1954, he made another attempt and approached the appellant to help him. The appellant held out hopes of success in obtaining the licence I if he was paid Rs250. Ram Narain paid only Rs140 and promised to pay the remaining amount after his sister's marriage. Thus, the third application for the licence was made in which Ram Narain's salary was declared to be

Rs105 per month. This attempt was successful and Ram Narain was granted the necessary licence. Eventually, the authorities concerned were apprised of the fact that the salary of Ram Narain was only Rs85 per month and that the declaration in the form that his salary was Rs105 per month had been falsely made with a view to get over the difficulty that applications for licences for firearms by Government servants drawing less than Rs100 per month would not ordinarily be considered. When the authorities came to know the true facts about Ram Narain's status in Government service, his licence was cancelled. When queried, Ram Narain said that his salary had been falsely declared on the advice of the appellant. Ram Narain again approached the appellant for help. The appellant demanded another Rs180 as a reward for getting the licence restored. The matter was then reported to the police. The appellant was arrested when a part of the sum agreed was handed to him. In the Supreme Court, the appellant relied on *State of Ajmer v Shivji Lal* AIR 1959 SC 847 and argued that in order to attract the operation of s 5(1)(d), it was a necessary element of the crime charged that the public servant should have misconducted himself in the discharge of his own duty, and that if the official favour promised by the public servant to the giver of the money was not in the hands of the public servant, he could not be said to have misconducted himself in the discharge of his own duty. In rejecting this submission, Sinha CJ in writing for the court said (at pp 198–99):

> In order to bring the charge home to an accused person under cl (d) aforesaid of the section, it is not necessary that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. 'Duty' and 'misconduct' go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That 'misconduct', which has been made criminal by s 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provision of cl (c) of s 5(1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of *Hori Ram Singh v Emperor* [1939] FCR 159; AIR 1939 FC 43). An application for special leave to appeal from that decision was refused by the Privy Council in *Hori Ram Singh v Emperor* [1940] FCR 15; AIR 1940 PC 54. This court, therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of the official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary, to constitute the offence under cl (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under s 5(1)(d). It is also erroneous to hold that the essence of an offence under s 5(2), read with s 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.

A It is therefore clear that the interpretation accorded to s 5(1)(d) of the Indian Prevention of Corruption Act 1947 is that it is not necessary that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage.

I shall next refer to s 87 of the Criminal Code of Queensland, the B material parts of which read as follows:

> Any person who —
>
> (i) Being employed in the Public Service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks, receives, or obtains, or agrees or attempts to C receive or obtain, any property or benefit of any kind for himself or any other person on account of any thing already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
>
> (2) Corruptly gives, confers, or procures, or promises or offers to give or D confer, or to procure or attempt to procure, to, upon, or for, any person employed in the Public Service, or being the holder of any public service, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office; is guilty of a crime ... .

This provision came up for consideration in *R v David* [1931] QWN 2 E where a policeman was given a travelling rug to do away with a jar of petrol found on the accused's premises after a fire. The accused was charged under s 87 of the Criminal Code. The prosecution submitted that, whilst the policeman had no duty to get rid of the petrol, he did have a duty to retain it and the expression 'in the discharge of the duties of his office' meant 'in F the course of his duties'. Macrossan SPJ rejected this submission saying:

> The act referred to — the getting rid of the petrol — did not come within the proper discharge of the officer's duty. It was not the carrying out of a duty which he had. Section 87 applies to cases where the act, sought to be performed or omitted arises out of a duty already incumbent on the official — as in the granting of licences. The chairman of a Board which grants licences G might be offered money to grant a certain licence ... That would come within s 87 — 'In the discharge of his duty'.

In *Herscu v R* (1992) LRC (Crim) 606, the High Court of Australia comprising Mason CJ, Brennan, Deane, Toohey and Gaudron JJ took the unanimous view that *R v David* [1931] QWN 2 was wrongly decided and H ought not to be followed. In that case, the appellant controlled a company which was the developer of a shopping centre and was dissatisfied with certain conditions relating to access to the centre imposed by the planning authority. He made two payments of $50,000 each to the Minister for Local Government and Main Roads for attempting to ensure that the planning authority approved changes in the access conditions. He was charged on I two counts of official corruption and was convicted. The issue that arose for determination by the High Court was whether an attempt by the Minister to secure the approval of the council to changes in the access to the

shopping centre could, as a matter of law, be regarded as an act done 'in the discharge of the duties of his office' as Minister for Local Government and Main Roads. The appellant's argument was that, because the Minister lacked any power as a matter of law to require the council to change the conditions of the planning consent in relation to access, he could be under no duty to do so and his attempt to procure a change was not an act done in the discharge of the duties of his office as Minister. He further submitted that a person is not charged with the performance of such a duty unless he is subjected to a legally binding obligation to do a particular act or make a particular omission. In answer to this, Mason CJ, Dawson, Toohey and Gaudron JJ said (at p 611):

> The section is concerned with the violation or attempted violation of official duty rather than with the actual performance of official duty. Official corruption necessarily involves impropriety and it is not to be supposed that s 87 is limited to those cases where the act or omission in question would, apart from the corrupt influence, be proper.

In his judgment, Brennan J said (at pp 614–615):

> It is submitted that the phrase 'duties of his office' in s 87 refers only to duties imposed by law by virtue of the particular office held. On this argument, when s 87 refers to 'being charged with the performance of any duty', it refers to a legal liability to perform a particular duty. No such duty was established in this case. I am unable to accept so narrow an interpretation of s 87. It is the leading code provision dealing with official corruption, a social evil which might occur not only when the holder of a public office is given a benefit on account of doing what he is legally bound to do but also when the holder of a public office is given a benefit on account of his using the influence of his office to secure an object (though it lies in the power of others to effect the object sought) or on account of his exercising a discretion vested in lieu to secure an object. Indeed, official corruption is less likely to occur and is likely to be less insidious in relation to the performance of a duty which a public officer is obliged to perform than in relation to the use of influence or the exercise of a discretion. It would be absurd to interpret s 87 as applicable only to a case where a bribe was paid on account of a public officer doing what he is legally bound to do or on account of his abstaining from doing what he is legally bound not to do. The scope of s 87 can hardly be limited to the giving of a benefit to a public officer to induce him to act in accordance with his legal duty: see *Attorney General of Hong Kong v Ip Chiu* [1980] AC 663, [1980] 2 WLR 332, where such a payment was thought to fall outside the scope of similar offence.
>
> In ordinary speech, 'the discharge of the duties' of the holder of a public office connotes far more than performance of duties which the holder of the office is legally bound to perform rather the term connotes the performance of the functions of that office. The functions of an office consist in the things done or omitted which are done or omitted in an official capacity. The phrase 'being charged with the performance of any duty' thus means no more than being responsible for performing the functions of the public office. That phrase distinguishes the holder of a merely honorific public office from the holder of a public office responsible for the performance of official functions. A broad interpretation of s 87 is better adopted to effect its purpose than a narrow interpretation. When the office is such that the holder wields influence

A or is in a position to wield influence in matters of a particular kind, the wielding of influence in a matter of that kind is a discharge of the duties of the office. Such a wielding of influence is something done in an official capacity. The minister administering the City of Brisbane Act under which the council operates and the City of Brisbane Town Planning Act which confers power on the council to amend the conditions applicable to a development approval might be expected to have considerable influence on the council's consideration of an application to amend conditions. As Judge Shanahan, the learned trial judge, put it to the jury in the course of his summing up:

> 'You look at the reality of the situation, members of the jury. Does a local authority ignore a letter from the Minister for Local Government? ... if a developer or a ratepayer goes to the Minister with a problem and asks him to intervene, to help in the area of his responsibility, would the Minister be in the discharge of the duties which he is charged by virtue of his being the Minister if he does something about that?'

Sometimes the minister's influence might be properly wielded — where, for example, considerations affecting main roads are relevant to planning issues — but there are opportunities for improperly influencing council decisions.

The Australian view is therefore in line with the Indian thinking, that is to say, it is not necessary that the act complained of must be within the scope of duty of the public officer concerned. This broad approach was adopted, correctly in my opinion, notwithstanding the qualification in the relevant statutory provisions to the effect that the act complained of must be one that was done in the discharge of the duties of office of the officer concerned.

I shall finally refer to s 4(2) of the Prevention of Bribery Ordinance 1974 of Hong Kong the material parts of which read as follows:

> Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his: (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant ... shall be guilty of an offence.

This provision of law came up for review in *Kong Kam-piu v The Queen* [1973] HKLR 120. In that case, two auxiliary police constables on duty went to a church hall where a private dance was being held, and, falsely alleging that a fight had taken place on the premises, threatened to break up the party. When pleaded with by the party organiser, one of the accused said: 'You know how to react ... ' and held out his palm. The organizer then proffered $20, but was told: 'That is insufficient — $30.' They did, however, in the event accept $20 and then departed. They were later charged under s 4(2) and convicted by a magistrate of corruptly soliciting and accepting the money as an inducement to abstain from taking action in respect of an offence against public order alleged to have been committed at the church hall and convicted. They appealed. Leonard J summarized the argument of the appellants in this way at p 126:

> The point made, somewhat audaciously, by [the appellants' counsel] was that since no actual offence against public order was alleged and since no such offence could properly be alleged by the appellants, the sum solicited and received could not be said to have been solicited or received by the appellants

> 'as an inducement to or otherwise on account of their abstaining from performing an act in their capacities as public servants.' To put it another way, if the appellants had acted as found by the magistrate they might have been guilty of the offence of demanding with menaces but not of an offence under s 4(2) ... Indeed, [the appellants' counsel] in the course of his argument stated: 'I seek to equate this situation with the case of a police officer who by producing a gun in the street gets money from an innocent passer-by.' He pointed out that there was nothing in the evidence to suggest anything disorderly about the dance or that the complainants might have thought there was ... He submitted that as all parties must have known that the appellants had no authority to break up the dance, it followed that it could not be said they were acting in their capacities as public servants — the threat must have been, and been regarded by all, as a private threat.

In answer to this his Lordship said at p 129:

> Here the vital words are 'in his capacity as a public servant' ... It becomes, I consider, clear that the word 'capacity' cannot be intended to bear the narrow meaning which [the appellants' counsel] would have me assign to it ... As I see it, the question which one must ask oneself when considering the corruptness of a gift given to or solicited by a public servant in order to induce him to abstain from a proposed course of action is 'Would that gift have been given or could it have been effectively solicited if the person in question were not the kind of public servant he in fact was?' If the answer is 'Of course not' as it is in this case then the gift has been solicited or given to him in his capacity as a public servant and is a corrupt one ... The present ordinance aims at the mischief of a police officer obtaining a gift from a member of the public for forbearing to act in a manner which would be embarrassing to that member of the public whether or not he be entitled virtute officii to do the act forborne provided of course that the embarrassment sought to be avoided by the gift could not equally easily have been caused by the police officer had he not been a police officer.

In approving this dictum, Lord Edmund-Davies in delivering the advice of the Privy Council in *Attorney General of Hong Kong v Ip Chiu & Anor* [1980] 2 WLR 332 said at p 338:

> It has to be said respectfully that the Court of Appeal never really dealt with Leonard J's test. Indeed, however unwittingly, they in effect discarded it, for more than once they equated a public servant's 'capacity' with his 'duty' and thus considerably narrowed the former word, which is the only one contained in s 4(2)(a).

It has therefore been held that the word 'capacity' in s 4(2) is not the equivalent of 'duty' and that the true test whether an advantage has been solicited or accepted by a person in the capacity of a public servant is whether the gift would have been given or could have been effectively solicited if the person in question were not the kind of public servant that he in fact was; if the answer to that question were in the negative, then the person had taken the gift in his capacity as a public servant, provided that the embarrassment sought to be avoided by the gift could not equally easily have been caused by any person not holding that office.

I must point out that there is no qualification in the definition of the expression 'corrupt practice' in s 2(2) of Ordinance No 22 as in the Indian

and Queensland legislation that I have referred to. It does not require that the act done must be in relation to the discharge of duties of the officer concerned. It merely refers to any act done by any Member or officer in his capacity as such Member or officer whereby he has used his public position or office for his pecuniary or other advantage. That the act done must have been done in the capacity of the Member as such Member is similar to the language employed in s 4(2) of the Prevention of Bribery Ordinance 1974 of Hong Kong. The judgment of the Privy Council in *Attorney General of Hong Kong v Ip Chiu & Anor* [1980] 2 WLR 332 is therefore a good guide in interpreting the relevant part of the expression 'corrupt practice' in s 2(2) of Ordinance No 22. Thus the word 'capacity' in the definition must not be equated with 'duty'. The true test would therefore be whether the act done would have been done or could have been effectively done if the person in question were not the kind of Member that he in fact was. If the answer to the question is in the negative, then the act of the Member is one that was done in his capacity as such Member whereby he has used his public office for his advantage, provided that it could not equally easily have been done by any person not holding that office. It applies to any advantage obtained by the Member or officer concerned by the use of his influence.

(2) The evidence adduced

The prosecution must prove that the accused directed Dato Mohd Said and Dato Amir Junus to obtain from Ummi and Azizan the written statements dated 18 August 1997 addressed to YAB Prime Minister with regard to the first and third charges and the public statements with regard to the second and the fourth charges to deny the allegations. The evidence relating to the manner in which the accused used his position in relation to the first and the third charges and in relation to the second and fourth charges are inter-related. As this ingredient forms a continuous series of acts in respect of both sets of charges, I shall deal with them together. In proof of this ingredient the prosecution must establish that:

(1) Azizan made an allegation of sodomy as contained in his 'Pengakuan Bersumpah' dated 5 August 1997 against the accused and Ummi made an allegation of sexual misconduct and sodomy as contained in her confidential report entitled 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5 August 1997 against the accused; and

(2) the accused directed Dato Mohd Said and Dato Amir Junus to obtain from Ummi and Azizan written statements addressed to YAB Prime Minister and public statements denying the allegations and that they obtained the statements as directed.

I shall consider the two elements separately.

(a) Whether Azizan and Ummi made the allegations against the accused

The prosecution is only required to prove that Azizan and Ummi made the allegations as contained in 'Pengakuan Bersumpah' dated 5 August 1997 (exh P14C) and in 'Perihal Salah Laku Timbalan Perdana Menteri' dated 5

August 1997 (exh P14A and B) respectively against the accused.

With regard to exh P14C, Azizan identified it as the one that was signed by him. It contains allegations of sodomy against the accused. On the manner in which it was prepared Azizan, said in cross-examination:

> (Saksi dirujuk kepada P14C.) Tidak sesiapa yang menyuruh saya membuat P14C. Saya buat atas kerelaan saya sendiri. Sebelum membuat P14C, saya ada berbincang dengan Ummi Hafilda apa yang telah terjadi ke atas diri saya. Kami sama-sama berjumpa untuk membincangkan perkara ini. ...
>
> Berkenaan dengan P14C, pada mulanya Ummi tidak mengetahui tentang perbuatan liwat yang terjadi ke atas diri saya. Saya telah menceritakan kejadian yang berlaku ke atas saya. Ummi pada mulanya tidak ada reaksi apa-apa.
>
> Saya yang menyuruh Ummi membuat P14C kerana Ummi mahir dalam penggunaan bahasa. Dia bersetuju ...
>
> P14C disediakan oleh Ummi dengan persetujuan saya. (P14C dirujuk kepada saksi.) Saya tiada semasa P14C disediakan. Semasa saya sampai di pejabat Ummi, P14C telah sedia ditaip. Saya tidak tahu siapa yang mendraf P14C. Saya pergi ke pejabat Ummi setelah diberitahu P14C telah siap ditaip. Saya bersetuju bahawa saya yang memberi fakta-faktanya dan Ummi yang hasilkan P14C ini. Saya cuma memberitahu Ummi tentang di mana tempat kejadian itu. Saya tidak berikan Ummi tarikh dan waktu kejadian kerana setiap kejadian saya tidak ingat tarikh dan waktu. Saya hanya memberitahu Ummi yang ini berlaku pada malam hari atau siang hari. ...
>
> Dengan maklumat yang saya berikan kepada Ummi, Ummi telah menyediakan P14C dan saya tandatangani.

In his re-examination, he said:

> Saya membaca P14C sebelum menurunkan tandatangan saya. Sebelum menurunkan tandatangan saya di P14C, saya faham dan setuju dengan kandungan P14C tersebut. P14C mengandungi fakta yang saya sendiri lalui.

It was contended by the defence that there is doubt as to whether exh P14C is that of Azizan as he had merely told Ummi that he was sodomized many times and the places where they took place. If he had given her only these facts, there is no explanation for the existence of the other materials in the exhibit. It was therefore submitted that Azizan is not the author of the contents of exh P14C and that Ummi had fabricated whatever was not told to her. The evidence of Azizan that I have reproduced shows that his reference to what he had told Ummi and what he did not tell her is restricted to particulars of the acts of sodomy. He only told her the places and frequency and not the dates and time the sodomy took place. He did not say that he did not tell her about the other contents of exh P14C. He has made it clear that it was prepared by Ummi on information supplied by him. Before he signed it, he read it and had agreed with its contents. Thus, the question of parts of exh P14C having been fabricated does not arise. In this regard, Ummi said in her cross-examination:

> (Saksi dirujuk kepada P14C.) ... Saya minta Azizan untuk menandatangani surat ini dengan persetujuan maklumat ini yang diberikan adalah benar.

I pause to add that Azizan's answer that he did not know who actually drafted exh P14C is understandable as he was not there when it was drafted. The evidence of Ummi shows that she drafted it. In her cross-examination, she said:

> (Saksi dirujuk kepada P14C.) Saya yang membuat ini.

Thus, there is evidence to show that the allegations against the accused in exh P14C were made by Azizan as he had signed it after it had been prepared by Ummi. As I have discussed in an earlier part of the judgment when dealing with the credibility of Azizan, this finding is not affected in any way by the contents of exh D55. He had denied a defence suggestion that he had mentioned that the signature on exh P14C was not his nor had he denied that the signature was his.

With regard to Ummi's authorship of exh P14A, B and C, it was suggested in cross-examination to her that it was not drafted by her. In reply, she said:

> Saya tidak bersetuju bahawa saya bukanlah orang yang mendraf P14A, B dan C. Saya tidak pernah menulis buku.
>
> Question: Is it not true that you told your brother Azmin that P14A, B and C were drafted by Dato Seri Megat?
>
> Answer : Itu adalah satu pembohongan besar dari Azmin.

When further cross-examined on the same issue, she said:

> Saya juga tidak ada menyatakan bahawa surat itu telah didraf oleh Dato Seri Megat Junid dan meminta saya menaip surat itu untuk diserahkan kepada Puan Ziela.

Ummi has denied the defence suggestion that exh P14A, B and C were drafted by Dato Seri Megat Junid. The fact that she is the person who drafted it is supported by exh P38A–V which is a handwritten draft by her of exh P14A, B and C and exh P35 which is a computer diskette with the contents of exh P14A, B and C in it. These were among the exhibits that ASP Zulkifli bin Mohamed took possession of from the office of Ummi on 18 August 1997. Her evidence that the draft is in her handwriting was not challenged by the defence. I therefore accepted her evidence that the draft was prepared by her. This supports her evidence that exh P14A was signed by her and that exh P14B and C were prepared by her. It must be observed that it was never effectively put to Ummi that she did not sign and send exh P14A and B together with P14C. As a matter of fact, a large part of her cross-examination proceded on the basis that she was the writer of exh P14A, B and C. However, it did take a different turn in a later part of the cross-examination when in answer to questions, she said:

> Adalah benar bahawa pada 14 July 1998 saya ada bertemu dengan Azmin, Azman dan Dato Sng di Restoran Sri Melayu bagi meminta kerjasama saya. Saya tidak bersetuju bahawa di Restoran Sri Melayu bahawa saya mengaku saya bukanlah penulis kepada P14A, B dan C tetapi mengatakan saya bukanlah penulis kepada *Buku 50 Dalil*. Saya tidak bersetuju bahawa Azmin ada bertanyakan kepada saya, 'That you have involved Dato' Seri Anwar in our

family misunderstanding.' Di pertemuan itu, saya bersetuju hanya saya, Azman, Azmin dan Dato Sng berada di restoran itu. Saya tidak bersetuju bahawa Azmin ada mengatakan bahawa apa yang saya buat adalah tidak betul.

It will be observed that the cross-examination started with a suggestion that Ummi was not the writer of exh P14A, B and C and ended with a further suggestion that Azmin had told her that what she did was wrong. If she was not the writer of the exhibit, then the question of her having done anything wrong does not arise. The cross-examination therefore does not seek to challenge her authorship of the exhibit effectively. In any event, the evidence that I have referred to earlier is sufficient to establish her authorship of the exhibit. It is my further view that even if exh P14A, B and C were drafted by someone else, the fact remains that she had signed exh P14A which is the covering letter for exh P14B and C. In that event, exh P14B becomes an allegation made by Ummi by virtue of her having adopted it. Thus, there is evidence to show that the allegations against the accused in exh P14B were made by Ummi. As I have discussed in an earlier part of the judgment when dealing with the credibility of Ummi, this finding is not affected in any way by the contents of exh D90. I must also point out that the directions given by the accused to Dato Mohd Said and Dato Amir Junus to obtain the retraction letters from Ummi and Azizan coupled with the subsequent obtaining of the letters and their handing over to the accused show that the accused had accepted the fact that Ummi and Azizan had made the allegations.

I have already stated in an earlier part of the judgment that the truth of falsity of the allegations is not in issue. The prosecution need only prove the fact of the allegations having been made by Azizan and Ummi. Their motive for making the allegations for any form of benefits, if any, argued as being relevant by the defence, is not an issue in the charges and is therefore irrelevant. The charges also do not require proof to show, as contended, that exh P14A, B and C were sent to YAB Prime Minister.

Thus there is evidence to show that Ummi and Azizan had made the allegations against the accused.

(b) Whether the accused directed Dato Mohd Said and Dato Amir Junus to obtain from Ummi and Azizan written statements addressed to YAB Prime Minister and public statements denying the allegations and that they obtained the statements as directed

The charges state that the accused directed Dato Mohd Said and Dato Amir Junus to obtain from Ummi and Azizan written statements addressed to YAB Prime Minister during the period 12 August 1997 to 18 August 1997 in respect of the first and third charges and the public statements on or about 27 August 1997 in respect of the second and fourth charges denying the allegations and that they obtained the statements as directed. As the persons to whom the directions were given are Dato Mohd Said and Dato Amir Junus, their evidence is critical to establish this element. I have dealt with the relevant parts of their evidence in an earlier part of the judgment. I shall now set out an outline of their evidence in chronological order.

11 August 1997

The accused asked Dato Mohd Said to look into a letter containing wild allegations against him.

12 August 1997

Upon being informed by ASP Zull Aznam, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence at 10 pm. He asked them about exh P14A, B and C. He told them that it was written by Ummi. He asked them to trace Ummi and Azizan in order to find out more about the letter and why it was written. Dato Amir Junus made a note (exh P42) of this meeting.

13 August 1997

Upon being informed by ASP Zull Aznam, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence at 10 pm. The discussion was on the latest development on exh P14A, B and C. The accused was informed that the letter had been given to the IGP by Dato Seri Megat Junid and that Ummi and Azizan had not been traced yet. The accused urged them to locate Ummi and Azizan immediately and interview them. He asked them to 'gempar' the two persons. Dato Mohd Said said that he understood the word to mean '... to surprise them and to put fear in them ...' because of the letter. Dato Amir Junus said that it meant to interview them and frighten them so that they will not spread the allegations in the letter. Dato Amir Junus made a note (exh P42) of this meeting.

15 August 1997

Upon being informed by ASP Zull Aznam, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence at 2 pm. They talked about exh P14A, B and C. The accused was also informed about exh P15. He showed them a copy of it and asked them to investigate fully into it. Dato Mohd Said and Dato Amir Junus suggested to the accused that a police report be made on exh P15. He did not want to make a report as he did not want the case to be investigated by the CID and because of the adverse publicity as he is a politician and Deputy Prime Minister. They managed to convince him to make a report. When he agreed to lodge the report, he told them that even though the case was going to be investigated by the CID he did not want the matter to go to court as, in that event, it would be publicized. Dato Amir Junus made a note (exh P43) of this meeting. ASP Zull Aznam lodged the police report (exh P16).

16 August 1997

Upon being informed by ASP Zull Aznam, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence at 10 pm. The accused told them that if they managed to arrest Ummi and Azizan, he did not want them to be detained for long. He wanted them to be questioned deeply as to why they wrote the letter. He repeated his request that he wanted the two to be traced as early as possible. Dato Amir Junus made a note (exh P43) of this meeting.

18 August 1997

Upon the request of the accused, Dato Mohd Said and Dato Amir Junus met him at his Official Residence at 12.30 am. They briefed him about the arrest of Ummi and Azizan. The accused directed them that Ummi and Azizan were to retract and deny their allegations as contained in exh P14 A, B and C in writing within 24 hours. He said that he did not want them to be detained for long and that their case should not be brought to court. He also wanted them to ensure that there is no publicity. The accused wanted the retraction letters to be in writing. Dato Amir Junus kept a note (exh P44) of this meeting.

At about noon on the same day, Dato Mohd Said and Dato Amir Junus were called by the accused to his Official Residence. They told him that Ummi and Azizan had changed their mind and were willing to retract the allegations. He told them that Ummi and Azizan should write letters of denial to YAB Prime Minister. Dato Amir Junus kept a note (exh P45) of this meeting.

At about midnight on the same day, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence. They showed him exhs P17 and P18. He was satisfied with exh P17 but not with exh P18. The accused then asked them to monitor the movement of Ummi and Azizan. Dato Amir Junus made a note (exh P46) of the meeting.

27 August 1997

Upon being informed by ASP Zull Aznam, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence at 10 pm. He directed them to get another letter each from Ummi and Azizan. The letters, to be in the form of public statements, were to be more committed, convincing, firm and must deny and withdraw all the allegations contained in exh P14A, B and C. The letters were to be open letters without being addressed to anybody and were to be posted to the accused's office. He wanted the letters to fully declare that he was not involved in any sex scandal. Dato Amir Junus kept a note (exh P47) of this meeting.

28 August 1997

The public statement of Azizan was read to the accused over the telephone by Dato Amir Junus. The accused made some amendments to the letter.

29 August 1997

The public statement of Ummi was read to the accused over the telephone by Dato Amir Junus. The accused made some amendments to the letter.

Later in the same day, Dato Mohd Said and Dato Amir Junus went to the accused's Official Residence and handed over to him exhs P20, P21 and P22.

I shall now consider the challenge mounted by the defence against the prosecution evidence relating to the directions given by the accused.

A With regard to the lodging of the police report (exh P16), Dato Mohd Said, to a suggestion in cross-examination, said:

> I agree that the accused initially did not want to make a report because of the adverse publicity as he is a politician and Deputy Prime Minister. He said something to that effect.

B On this issue, Dato Amir Junus, upon being cross-examined, said:

> Laporan polis berkenaan dengan kes ini telah pun dibuat pada 15 Ogos 1997 oleh ASP Zull Aznam untuk menjalankan siasatan ke atas surat layang 'Talqin Terbuka' dan atas kes ini. Laporan polis itu dibuat atas nasihat pihak polis. Saya bersetuju tertuduh mengikut nasihat polis. ...
>
> C Saya bersetuju bahawa Special Branch memaklumkan tertuduh bahawa dakwaan-dakwwaan tersebut adalah serious dan telah dinasihatkan untuk membuat laporan polis.

Thus, Dato Mohd Said has agreed with the defence suggestion that the accused initially did not want to make a report because of the adverse D publicity as he is a politician and Deputy Prime Minister. Dato Amir Junus also agreed with the defence suggestion that later the accused agreed to make the report on their advice. This line of cross-examination of the two witnesses shows that the defence case on the reason for the lodging of the police report is similar to that advanced by the prosecution.

It is the case for the prosecution that it was the accused who summoned E Dato Mohd Said and Dato Amir Junus to meet him on the various occasions. Upon cross-examination on this issue, Dato Mohd Said said:

> I reported to the accused progressively from time to time on the results of the investigation at his Official Residence. I did not brief the accused on my own accord. Because the accused called us to brief him, we went. By 'us' I mean
>
> F my deputy and I.

Dato Amir Junus said in cross-examination:

> Appointment untuk saya jumpa dengan tertuduh selalunya dibuat antara ASP Zull dan saya. Saya tidak tahu sama ada ASP Zull membuat appointment melalui En Azmin ....
>
> G Saya setuju bahawa dari masa ke semasa Cawangan Khas dipanggil oleh tertuduh untuk mentaklimatkan perkembangan siasatan yang dijalankan dan maklumat-maklumat yang didapati. Kebanyakan appointment telah dipanggil oleh tertuduh melalui Zull Aznam dan bukan Cawangan Khas.

The manner in which the questions were put to the witnesses shows that the H accused agreed that he contacted Dato Mohd Said and Dato Amir Junus regularly to brief him on the progress of the investigation. This is indicative of the deep interest that he took in the investigation.

The accused's instruction to Dato Mohd Said and Dato Amir Junus to frighten Ummi and Azizan was challenged by the defence with reference to the meaning of the word 'gempar'. On the meaning to be ascribed to the I word, Dato Mohd Said, on a suggestion put to him, said:

> I don't agree that 'gempar' could mean a slight caution. The word is not the equivalent of 'acah'. The word 'gempar' means to surprise and to put a little fear.

It will therefore be observed that the use of the word 'gempar' by the accused is not disputed. What was challenged was only its meaning. A

On the nature of the directions given by the accused to Dato Mohd Said and Dato Amir Junus, it was suggested to them that the accused only asked them to investigate into the allegations thoroughly and fully. This was denied by them. Dato Mohd Said agreed that the accused asked him to investigate fully and deeply into the allegations. However, upon further cross-examination, he said: B

> Earlier accused told us to look for them. We tried to look for them. That was in the beginning only. Later on there were more instructions.

In this regard, Dato Amir Junus said in cross-examination: C

> Tertuduh telah mulai 12 August 1997 telah mengarah SP1 dan saya untuk mengesan Ummi dan Azizan serta mencungkil maklumat-maklumat mengenai mengapa mereka membuat dakwaan-dakwaan terhadap tertuduh. This is only to find out why they wrote the letters. Saya tidak setuju tertuduh tidak memberi arahan-arahan kepada kami. D

When it was put to Dato Amir Junus that the accused never directed them to do anything but merely requested Dato Mohd Said to conduct a thorough investigation into the case, he said:

> Kami diarah untuk mengesan Ummi and Azizan dan mendapatkan maklumat-maklumat dari mereka. I do not agree that he merely requested us as suggested. E

And later:

> Question: I put it to you that accused only requested you to investigate fully.
>
> Answer : Tertuduh mengarahkan kami untuk mengesan Ummi dan Azizan dan mendapatkan maklumat kenapa mereka membuat dakwaan-dakwaan dan bukan to investigate fully. F

Both Dato Mohd Said and Dato Amir Junus have therefore denied the defence suggestion that they were only asked to investigate into the matter thoroughly and fully.

If in fact it is true that Dato Mohd Said and Dato Amir Junus were only instructed to investigate into exh P16 thoroughly, then the steps taken by them to obtain the retraction letters would be part of their investigative process done on their own initiative. However, this was not put to them in cross-examination. On the contrary, what was put to Dato Amir Junus goes this way: G

> I put it to you that only after the Special Branch briefed accused and said that they have investigated and found the allegations to be untrue and that it involved a political conspiracy against him and Ummi and Azizan were prepared to retract their allegations that the accused requested for the retractions. H

What was put to Dato Amir Junus has obvious reference to exhs P17 and P18 as it is the case for the prosecution that the accused wanted Ummi and Azizan to write a letter of denial to YAB Prime Minister after he was I

A informed by Dato Mohd Said and Dato Amir Junus that they were willing to retract their allegations. With regard to exhs P20 and P22, Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence on 27 August 1997 at about 10 pm. The accused gave them further directions. As Dato Mohd Said said:

B > That night he directed us to get in touch with Ummi and Azizan and from them to get another letter from each of them. He wants the letters to fully disclose that the accused was not involved in any sex scandal. He wants the letters to be open letters without being addressed to anybody. It was to be an open letter. He wanted the letters to be posted to the Deputy Prime Minister's Office. We had to meet again with Ummi and Azizan to write the letters. The accused told us to get the letters from the two persons and post to his office. After that, I instructed Dato Amir to carry out the instruction of the accused.

C

Dato Amir Junus said:

> Apabila saya dan SP1 berada di rumah tertuduh, tertuduh telahpun mengarahkan kami mendapatkan satu surat pengakuan yang berbentuk kenyataan umum daripada Ummi dan Azizan. Kenyataan umum yang dikehendaki oleh tertuduh ialah satu kenyataan yang lebih committed, meyakinkan dan tegas, serta menafikan dan menarik balik kesemua dakwaan-dakwaan yang terkandung di dalam ID14. Tertuduh juga telah mengarahkan supaya surat ini diposkan ke pejabat Dato' Seri Anwar Ibrahim, Timbalan Perdana Menteri. Surat ini hendaklah diperolehi daripada Ummi dan Azizan.

D

E Dato Amir Junus, to a suggestion by the defence, that the accused never instructed him and Dato Mohd Said to obtain the public statements from Ummi and Azizan, said:

> Saya tidak bersetuju bahawa tertuduh langsung tidak mengarah saya dan SP1 untuk mendapatkan kenyataan umum dari Ummi dan Azizan.

F

The defence suggested in cross-examination to Dato Amir Junus that the accused neither expressed satisfaction with nor made corrections to any of the letters. This is what he said:

> Saya tidak bersetuju bahawa pada 28 Ogos 1997 langung tiada perbualan telefon di antara tertuduh dan saya pada jam lebih kurang 11.30 malam. Saya tidak setuju bahawa tertuduh tidak pernah berbincang tentang kes ini melalui telefon. Saya tidak setuju bahawa saya tidak membaca draf ID22 kepada tertuduh. Saya tidak setuju bahawa tertuduh tidak meminda atau pembetulan dibuat di atas ID29. Saya tidak bersetuju yang tertuduh tidak meluahkan kepuasan hatinya kepada mana-mana dokumen. Saya mengatakan dalam keterangan saya bahawa beberapa ayat-ayat di para yang terakhir di ID29 digugurkan oleh tertuduh.

G

H

ACP Mazlan gave evidence on the corrections made to exh P19 by the accused. This supports the evidence of Dato Amir Junus that the accused made corrections to the letter. The normal rule that one accomplice cannot corroborate the evidence of another accomplice does not apply in the case of Dato Amir Junus and ACP Mazlan in view of my finding that although they are accomplices their evidence does not require corroboration. As their evidence can be accepted without corroboration the evidence of one can be used to support that of the other. Furthermore, the evidence of Ummi and Azizan also show that corrections were in fact made to exhs P19 and P29.

I

With regard to the prosecution evidence on the request by the accused to post the public statements to his office Dato Mohd Said, in answer to a question in cross-examination, said:

> Question: I am instructed that the accused never requested that ID19 to ID22 be posted to his office?
>
> Answer : The instruction to me was that they should be posted to the Deputy Prime Minister's office.
>
> (Saksi dirujuk kepada ID19 hingga ID22.) Three of the exhibits carry a rubber stamp. ID19 does not have a rubber stamp. The stamps do not have an initial.

It will be noted that apart from a suggestion that the accused did not ask for the public statements and that he did not want them to be posted to his office, the manner in which he received them from Dato Mohd Said and Dato Amir Junus was not subjected to any cross-examination. The evidence of Suhaime bin Yunus that he did not affix the Received Rubber Stamps on the letters was not challenged. If the accused had not asked for the public statements, he would surely have questioned Dato Mohd Said and Dato Amir Junus on the sinister manner in which they were handed to him, that is to say, by having them placed in an envelope with his name and address on it with a stamp which had been cancelled. The affixing of the Received Rubber Stamps on the letters indicates that the accused wanted them to have the appearance of having been received through the post. This shows that he had asked Dato Mohd Said and Dato Amir Junus to have the letters posted to his office. As he had asked for the letters to be posted, he would have had some form of communication prior to that with Dato Mohd Said and Dato Amir Junus regarding the letters. In the circumstances, that would be the request for the letters as disclosed by the evidence.

The fact that exhs P17 and P18 were voluntarily written as stated in exh D25, the report sent by Dato Mohd Said to YAB Prime Minister, proves beyond reasonable doubt that after investigations were carried out the allegations were found to be false and baseless. Thus, the accused was fully justified to have asked for the retractions of the allegations. That was the submission made by the defence. It was further submitted that this must be read with Dato Mohd Said's evidence that the accused asked him to investigate into the matter fully and that the accused did not ask for the retractions straightaway. It is true that in that report, Dato Mohd Said had stated that exhs P17 and P18 were written voluntarily by Ummi and Azizan. He had also said that the letters form the primary basis of exh D25. As to why he said the letters were written voluntarily, he said in re-examination:

> When we conduct a turning over operation and if it is successful and which was in this case, the fact that Ummi and Azizan wrote the letters themselves I concluded it was voluntary. This is how the Special Branch looks at it. In D25, I did not mention the methods employed to obtain ID17 and ID18. ...
>
> When I wrote D25, my Special Branch investigation was not completed.

The method employed to obtain exhs P17 and P18 shows that the written statements were not voluntarily written. When exh D25 was written, the Special Branch investigation was also not completed yet. Dato Mohd Said

A has explained why he concluded that the letters were written voluntarily, that is to say, that it is a Special Branch way of looking at it by virtue of the turning over operation being successful and Ummi and Azizan having written the letters in their own handwriting. Such a view cannot be sustained in law. The argument advanced by the defence therefore has no merit.

B

Thus the defence case, as put to the prosecution witnesses, is that the accused did ask for retraction of the allegations from Ummi and Azizan when they were prepared to retract their allegations though he never asked for the public statements. It will be observed that the challenges by the defence of the directions given by the accused to Dato Mohd Said and Dato C Amir Junus were put in the form of suggestions to them. A suggestion in cross-examination can only be indicative of the case put forward or the stand taken by the party on whose behalf the cross-examination is being conducted, but to no extent whatsoever can it be a substitute for evidence if it is clearly repudiated by the witness to whom it is made. In this regard, it was observed in *Emperor v Karimuddi Sheikh* AIR 1932 Cal 375:

D

> Mere suggestions by a pleader or advocate for the accused do not amount to evidence of the fact suggested, unless they are either partly or wholly accepted by the witness for the prosecution.

It follows that whatever was put to Dato Mohd Said and Dato Amir Junus E and denied by them cannot be considered as evidence at this stage.

In my opinion, therefore the case for the defence as put to the prosecution witnesses in cross-examination indicates that exh P16 was lodged by the accused on the advice of Dato Mohd Said and Dato Amir Junus after his initial reluctance to avoid publicity and when Ummi and Azizan were prepared to retract their allegations he requested for the written F statements. The evidence indicates, contrary to the defence suggestion, that the accused asked for the public statements. Certain other features of the case are inconsistent with the accused merely asking for a thorough investigation. With regard to the prosecution evidence that the accused asked Dato Mohd Said and Dato Amir Junus to 'gempar' Ummi and G Azizan, the only challenge made to the word was its meaning. Thus the defence has accepted the fact that the word was used by the accused. The prosecution evidence that Ummi and Azizan should be traced quickly and that they should not be detained for long and that their case should not be investigated by the CID or brought to court was not challenged. These coupled with the fact that the accused contacted Dato Mohd Said and Dato H Amir Junus regularly to brief him on the progress of the investigations support the prosecution case that he asked for the retractions. The evidence discloses that there is ample corroboration to support this finding. The evidence of Ummi and Azizan on the manner in which they were asked to write the denial letters shows that they were compelled to write it. This corroborates the evidence of ACP Mazlan and DSP Aziz. This coupled with I the existence of the letters, exhs P17, P18, P20 and P22 corroborates the evidence of Dato Mohd Said and Dato Amir Junus that they directed ACP Mazlan and DSP Aziz to obtain them. The fact that exhs P20, P21 and P22

were handed to the accused is corroborated by the presence of the Received Rubber Stamps of his office on them. Suhaime bin Yunus who said that he did not receive the letters was not cross-examined. So it is clear that the accused received them. The accused further used the letters of 2 September 1997 when he handed them to SAC Musa. It is therefore my view that there is sufficient corroboration of the evidence of the accomplices. In the circumstances, I accepted the prosecution evidence that the accused asked Dato Mohd Said and Dato Amir Junus to have the allegations made by Ummi and Azizan denied and retracted.

A matter of significance is whether what the accused asked Dato Mohd Said and Dato Amir Junus to do amount to directions as contemplated by the charges. It was contended by the defence that the directions that Dato Mohd Said claimed to have been given by the accused were in actual fact only requests which he himself construed as directives. It was argued that a request is one that is done politely with no compulsion. The person to whom a request is made has an option of acceding to it or refusing to follow it. If a person is directed to do something, then there is some measure of compulsion or authority attached to it. It was submitted that the evidence of Dato Mohd Said reveals that there was only a request from the accused which he was not obliged to comply with. The defence concluded by saying that the word 'directed' in the four charges is therefore misplaced as it is not borne out by the evidence. I shall first consider the cross-examination of Dato Mohd Said on this issue as relied on by the defence. It runs as follows:

Question: Would you agree that from the start the accused all along requested you to look into this matter fully and deeply?

Answer : It is the interpretation of the word 'request'.

Question: You said it depends how you interpret the word 'request'.

Answer : Yes.

Question: You interpreted it as a direction?

Answer : Coming from the DPM, I interpreted it as a direction.

The word 'direction' is defined in *Black's Law Dictionary* as:

> That which is imposed by directing; a guiding or authoritative instruction; order; command: *Hughes v Van Bruggen* 44 NM 534, 105 p 2d 494, 496.

And the verb 'direct' as:

> To point to; guide; order; command; instruct. To advise; suggest; request.

A direction is therefore something that is stated authoritatively. Whether I tell my secretary: 'Please type this notes of evidence' in a calm and polite voice or utter the same words in a loud and commanding tone, it still amounts to a direction as she is compelled to obey it. Thus, the tone in which a direction is given becomes irrelevant where the person to whom it is given is compelled to obey it. A direction can therefore be communicated in the form of a request, suggestion, instruction or in any other manner provided that there is a compulsion to obey it. As a matter of fact, a perusal of the notes of evidence reveals that Dato Mohd Said had used the words 'asked', 'urged', 'wanted', 'directed', 'told' and 'instructed' to describe the

A communications between him and the accused. The communications from the accused to Dato Mohd Said and Dato Amir Junus would therefore amount to a direction if they felt compelled to obey them.

The defence argued that in order to say that the accused had used his public position to his advantage in respect of the four charges, he must have had authority over the Special Branch in law to direct them. If he did not have that authority, he would not have had the power to direct Dato Mohd Said and Dato Amir Junus in matters pertaining to the performance of their duties. The defence referred to their evidence where they said that at all material times they were only responsible to the IGP and the Minister of Home Affairs. There was no evidence to show that they were responsible to the accused in his capacity as the Deputy Prime Minister or as Minister of Finance. Accordingly, it was contended, the words '... in his capacity ...' in s 2(2) of Ordinance No 22 refers to a capacity to exercise power. I have already considered the law relating to this argument in some detail in an earlier part of the judgment. In substance, the view that I had expressed is that the 'capacity' in s 2(2) of Ordinance No 22 must not be equated with 'duty'. The true test would be whether the act done would have been done or could have been effectively done if the person in question were not the kind of Member that he in fact was. If the answer to the question is in the negative, then the act of the Member is one that was done in his capacity as such Member whereby he has used his public office for his advantage, provided that it could not equally easily have been done by any person not holding that office.

I shall now advert to the evidence adduced in order to determine whether the position of the accused comes within this meaning. In his cross-examination, Dato Mohd Said said this:

> Question: If you believed the allegations to be true, why did you direct that they be retracted?
>
> Answer : I did it because it was an instruction from the Deputy Prime Minister. Even if the Prime Minister, Minister of Home Affairs or IGP ask me to do it, my belief is I should not do but the situation may be such that I have to do it despite my belief.

In his re-examination, he said:

> In respect of the instructions or directions given by the accused, I could not have refused it. I had no choice. I had to follow the instructions. This is because he was the Deputy Prime Minister and not any ordinary person. Because of that, I felt compelled to do it.

Dato Amir Junus, on being asked in his examination-in-chief as to whether he would follow the instructions of the accused if he was not the Deputy Prime Minister and Minister of Finance, said:

> Jika tertuduh seorang biasa dan bukannya Timbalan Perdana Menteri dan Menteri Kewangan, saya tidak akan mematuhi arahan-arahan yang diberi.

In his cross-examination, he said:

> Question: Jika Timbalan Perdana Menteri memberikan arahan adakah kamu perlu mematuhi arahan tersebut? ...

Answer : Jika saya menerima arahan dari Timbalan Perdana Menteri, saya sebagai kakitangan Kerajaan, terpaksa menerima arahan-arahan itu. Arahan-arahan yang saya terima daripada Timbalan Perdana Menteri adalah bersama dengan pegawai atasan saya.

Question: Can you obey an order from the Timbalan Perdana Menteri who is not your superior officer?

Answer : Saya sebagai seorang kakitangan Kerajaan dan arahan-arahan daripada Timbalan Perdana Menteri saya terpaksa mematuhi arahan itu.

Question: As a police officer knowing your duties can you take orders from the Timbalan Perdana Menteri who is not your superior officer?

Answer : Seperti yang saya katakan tadi, saya menerima arahan itu bersama-sama dengan pegawai atasan saya. Oleh itu saya terpaksa mematuhi arahan-arahan yang diberi oleh Timbalan Perdana Menteri.

Question: If the Timbalan Perdana Menteri whom you admit is not your superior officer gives you an order, do you have to obey it?

Answer : Saya sebagai pegawai Kerajaan, arahan-arahan yang diberi oleh Timbalan Perdana Menteri, who is also at the time a government officer, maka saya tiada ada pilihan lain mematuhi arahan-arahan yang diberi kepada saya. Jikalau arahan-arahan diberi oleh Timbalan Perdana Menteri, saya akan merujuk kepada pegawai atasan saya.

It is thus clear that Dato Mohd Said and Dato Amir Junus felt compelled to obey the accused because he was the Deputy Prime Minister and Minister of Finance. They would not have obeyed him if he was an ordinary man. The corollary is that the communications from the accused to Dato Mohd Said and Dato Amir Junus amount to directions as contemplated by the four charges.

I shall now consider the evidence relating to the manner in which the statements were obtained.

(i) The obtaining of exhs P17 and P18

Upon the arrest of Ummi and Azizan, the accused directed Dato Mohd Said and Dato Amir Junus on 18 August 1997 at 12.30 am that Ummi and Azizan were to retract and deny their allegations as contained in exh P14A, B and C. He wanted the retraction letters to be addressed to YAB Prime Minister. At 1.30 am on the same day, Dato Mohd Said and Dato Amir Junus instructed ACP Mazlan and DSP Aziz to obtain a retraction of the allegations made by Ummi and Azizan within 24 hours. He said that the interrogation to obtain a retraction is known within the Special Branch as a 'Turning Over Operation'. The object in turning over Ummi and Azizan was to make them change their stand. Dato Amir Junus explained that the instruction given to the two officers was not normally done by the Special Branch. He explained it this way:

> Arahan-arahan yang diberikan kepada SP7 dan SP2 adalah bukan perkara biasa dalam Cawangan Khas. Saya ingin menerangkan perkara ini dalam Bahasa Inggeris. In normal circumstances, the Special Branch normally

collects intelligence gathering before we arrest anybody. In the case of Ummi and Azizan, there was no intelligence gathering but just to surface them and to identify them. This is contrary to Special Branch practice. The second aspect when we turn over or neutralize any target, we will go for the truth of the facts pertaining to the case. But in the case of Ummi and Azizan, there was no instruction given to extract the truth of the matter but to neutralize them. This is again not the normal norms of Special Branch practice. The technique of turning over and neutralization in Special Branch is only applicable to targets who have communist ideology, religious fanaticism and extremism. But in the case of Ummi and Azizan which is of a criminal nature, the technique was applied and this is the first time that we applied this kind of technique in cases of this nature.

ACP Mazlan was instructed to interrogate Azizan and DSP Aziz, Ummi. DSP Aziz said that the instructions he received from Dato Amir Junus meant that he had to change the stand of Ummi and Azizan so that they will withdraw all the allegations as contained in exh P14A, B and C.

At about 2.30 am on 18 August 1997, ACP Mazlan and DSP Aziz gave a preliminary assessment of their interrogation of Ummi and Azizan to Dato Mohd Said. DSP Aziz informed him that it would be a bit difficult to deal with Ummi as she was still very strong in her belief of her allegations. ACP Mazlan reported that it would be easier to deal with Azizan. Both the officers concluded, as a result of the interrogation, that there was some basis in the allegations. Dato Mohd Said then said:

> In spite of that, I directed them to go again to neutralize them to make them change the stand. I still directed my men to neutralize Ummi and Azizan even after being told that there is some basis in their allegations because the direction I received was from the Deputy Prime Minister.

In this regard, Dato Amir Junus said:

> Setelah SP2 dan SP7 memberi taklimat kepada saya dan SP1, kami telah memberi arahan supaya mereka meneruskan meneutralizekan Ummi dan Azizan. Saya dan SP1 telah mengarahkan mereka untuk terus meneutralizekan Ummi dan Azizan kerana mematuhi kehendak tertuduh.

At about 6 am on the same day, ACP Mazlan informed Dato Mohd Said and Dato Amir Junus that Azizan had been neutralized. At 10 am on the same day, DSP Aziz informed them that Ummi had been neutralized. At about noon on that day, they were called by the accused to his Official Residence. Dato Mohd Said said:

> Dato Amir and I went. We briefed him on the result of the interrogation. We told him that they had already changed their stand and they are willing to retract the allegation. During this meeting, the accused directed us that the two arrestees should write letters of apology addressed to YAB Prime Minister.

Dato Mohd Said passed over this instruction to ACP Mazlan and DSP Aziz on the same day at 4.30 pm. This instruction was carried out. At about 6 pm, DSP Aziz handed the first draft of the letter from Ummi. With regard to this draft, Dato Mohd Said said:

> After taking a look at the letter, I said it was not good enough. I told DSP Aziz to get a more committed letter from Ummi. The first draft was not clear. I thought the letter was not good enough to be sent to the Prime Minister. The wordings, construction of sentences and apology were not really there.

On this issue, Dato Amir Junus said:

> Selepas saya dan SP1 meneliti surat yang ditulis oleh Ummi itu, surat itu tidak memenuhi kehendak tertuduh, iaitu untuk menafikan segala dakwaan-dakwaan. Saya dan SP1 telah mengarahkan SP2 untuk Ummi menulis surat yang lebih tegas lagi.

At about 9.30 am on the same day, ACP Mazlan and DSP Aziz handed over the letters from Azizan (exh P17) and Ummi (exh P18) to Dato Mohd Said. At about midnight on the same day, Dato Mohd Said and Dato Amir Junus handed over the two letters to the accused at his Official Residence. Dato Mohd Said said:

> That night, Dato Amir and I met the accused in his house. I gave the accused copies of ID17 and ID18. The accused read the two letters and as far as ID17 was concerned, the accused was satisfied with it. He was not very pleased with ID18.

On this issue, Dato Amir Junus said:

> Apabila saya dan SP1 telah menyerahkan ID17 dan ID18 kepada tertuduh, tertuduh telah pun membaca kedua-dua surat tersebut. Selepas membaca ID17, tertuduh meluahkan perasaan bahawa surat ini bolehlah diterima tetapi apabila membaca surat ID18 yang ditulis oleh Ummi, tertuduh kurang puashati dan bukan seperti yang dikehendaki. Bagi ID17 tertuduh telah mengatakan, 'Ini boleh,' tetapi bagi surat ID18, 'Bukan macam ini'.

I consider it necessary to outline the prosecution evidence to show the manner in which Ummi and Azizan were turned over and neutralized into preparing exhs P17 and P18. With regard to the turning over of Ummi, DSP Aziz said:

> Pendekatan yang kami gunakan berteraskan pendekatan psikologi. Dalam konteks ini, kami telah menimbulkan ketakutan dalam diri Ummi dengan cara menggemparnya dari sudut undang-undang berkaitan tahanan di bawah Akta Keselamatan Dalam Negeri dan Akta Hasutan. Ummi juga ditakutkan dengan kemungkinan tindakbalas dari orang yang ditohmah yang mana merupakan Menteri Kewangan dan Timbalan Perdana Menteri pada ketika itu. Selain daripada itu, terdapat dua lagi pendekatan yang digabungkan. Pertama, soalsiasat yang berterusan dengan soalan yang bertalu-talu tanpa henti bagi menimbulkan suasana seolah-olah akan berlaku ancaman fizikal. Kedua, pendekatan memujuk dan nasihat bagi tujuan mengelirukan sasaran. Ketiga-tiga pendekatan ini telah menimbulkan tekanan mental yang tinggi sehingga Ummi hilang daya melawan dan menyerah kepada pasukan soalsiasat.
>
> Daripada pukul 11 malam 17 August 1997 sehingga pukul 7 pagi 18 Ogos 1997, saya dan pasukan saya telah menjalankan proses soalsiasat ke atas Ummi tanpa henti. Setelah saya mendapati Ummi telah berjaya dineutralizekan saya telah memaklumkan mengenai kejayaan tersebut kepada SP1 pada sekitar jam 10 pagi.

After DSP Aziz received instructions to obtain the retraction letter from Ummi he discussed the matter with her. As he said:

> Walaupun pada ketika itu, Ummi telah berjaya diturn-overkan, tetapi dia tidak sanggup menurunkan pendirian baru ini dalam bentuk tulisan dengan alasan adalah sukar untuk menunjukkan pertukaran pendirian dalam tempoh kurang dari 24 jam. Saya meneruskan pujukan dan nasihat bagi meyakinkan Ummi untuk menulis surat berkenaan yang mana akhirnya beliau hanya bersetuju menulis surat memohon maaf. Memandangkan surat asal yang bertarikh 5 Ogos 1997 dialamatkan kepada Dato' Seri Dr Mahathir, Perdana Menteri Malaysia, maka surat memohon maaf juga dialamatkan kepada Perdana Menteri. Setelah Ummi bersetuju untuk menulis surat memohon maaf berkenaan, kami telah berbincang mengenai bentuk surat yang bakal ditulis. Peranan saya dalam tulisan surat ini lebih berbentuk selaku penasihat.
>
> Pukul 6 petang 18 August 1997, saya telah mengemukakan surat yang telah siap ditulis oleh Ummi kepada SP1. Setelah SP1 menerima surat tersebut, beliau telah berasa tidak puashati kerana surat itu terlalu mendatar dan tidak committed. SP1 mengarahkan satu surat yang lebih tegas dan committed ditulis oleh Ummi. Saya telah pergi berjumpa dengan Ummi semula dan berbincang berkaitan dengan arahan berkenaan yang mana akhirnya pada sekitar jam 8 malam satu surat yang lebih tegas dan committed telah dihasilkan.

Ummi explained why she wrote exh P18 in this way:

> Soalsiasat itu telah dijalankan berterusan tanpa henti dari pukul 12 malam hingga pukul 7 pagi 18 August 1997. Dalam jangkamasa itu, saya tidak dibenarkan untuk tidur. Cara soalsiasat dikendalikan adalah begitu kasar dan lebih bercorak kepada ancaman dan ugutan. Semasa saya disoalsiasat, pegawai polis tersebut telah meminta saya membuat satu surat penafian dan menarik balik segala pertuduhan yang saya kemukakan seperti di P14A dan P14B. Saya tidak bersetuju sama sekali untuk membuat surat penafian tersebut. Saya tidak bersetuju untuk membuat surat penafian kerana saya yakin pertuduhan di dalam laporan saya mempunyai asas yang begitu kukuh untuk disiasat oleh pihak polis. Apabila saya tidak bersetuju, mereka masih meneruskan penderaan mental terhadap saya untuk saya mengubah pendirian saya. Pada akhirnya, saya bersetuju untuk membuat surat penafian tersebut. Saya bersetuju kerana saya telah diancam dan diugut oleh DSP Aziz Hussain untuk menghantar saya ke lockup Jalan Travers sebelum ditahan di bawah ISA selama dua tahun.

With regard to the turning over of Azizan, ACP Mazlan said that he started his interrogation at about 1.45 am on 18 August 1997. After the initial interrogation, ACP Mazlan believed in the allegations made by Azizan. He informed Dato Mohd Said about this but was told to continue with the turning over process. ACP Mazlan said:

> Saya terpaksa mematuhi arahan tersebut walaupun saya tahu dia agak aneh sedikit.

He then continued:

> Selain daripada ASP Ariff bin Ariffin dan Ketua Inspektor Zamri bin Hashim lebih kurang jam 5 pagi, SP2 telah masuk membantu saya dalam proses turning over. Teknik yang saya lakukan dalam proses turning over lebih kepada persuasive methods. Jadi process ini agak lambat sedikit untuk dapatkan

result. Oleh itu pada ketika itu, Azizan masih belum dineutralize. SP2 yang mempunyai perwatakan garang (fierce) menyoal Azizan dan lebih kurang satu jam selepas itu Azizan dianggap telah dineutralize. Azizan dianggap dineutralizekan lebih kurang jam 6 pagi. Azizan tidak diberi masa untuk tidur sebab tugas yang saya lakukan mesti complete dalam masa 24 jam.

According to ACP Mazlan, the steps he took to obtain the denial letter from Azizan are as follows:

Setelah saya menerima arahan dari SP1, saya meneruskan menjalankan arahan itu di mana saya pergi ke bilik soalsiasat untuk mendapatkan surat penafian tersebut dari Azizan. Di sini, saya menghadapi masalah di mana Azizan enggan menafikan dalam bentuk surat yang ia pernah diliwat oleh tertuduh. Saya terpaksa memujuk beliau untuk mendapatkan surat penafian tersebut. Di akhir proses ini, Azizan cuma bersedia untuk menulis sepucuk surat memohon maaf ke atas keterlanjurannya membuat surat pengakuan bersumpah iaitu ID14C. Ada ketika saya memujuk Azizan untuk mendapatkan surat berkenaan itu. Dua pegawai saya, ASP Ariff dan Ketua Inspektor Zamri, terlibat bersama saya memujuk Azizan untuk mendapatkan surat berkenaan iaitu surat penafian. Saya mengambil masa selama lebih kurang dua jam memujuk Azizan untuk mendapatkan surat penafian. Sekitar 8 malam, barulah Azizan bersedia menulis satu surat memohon maaf yang dialamatkan kepada YAB Perdana Menteri. Surat tersebut dialamatkan kepada YAB Perdana Menteri oleh kerana pengakuan bersumpahnya iaitu ID14C juga dialamatkan kepada Perdana Menteri. Saya cuma memberi sedikit guidance kepada Azizan untuk menulis surat tersebut tetapi fakta di dalamnya adalah karangan Azizan sendiri khususnya mengenai memohon maaf di atas keterlanjurannya. Azizan selesai menulis surat tersebut sekitar jam 9 malam. Setelah Azizan selesai menulis surat berkenaan, saya sampaikan surat tersebut kepada SP1.

Azizan explained the circumstances in which he wrote exh P17 in this way:

Sewaktu saya disoalsiasat, saya disoalsiasat bersendirian dalam sebuah bilik. Pada awal saya disoalsiasat oleh ACP Mazlan, saya maklumkan bahawa apa yang terkandung di dalam P14C adalah benar sambil bersumpah dengan nama Allah dan memegang Surah Yasin sekiranya saya berbohong maka saya akan dilaknati Allah. Selepas itu, pegawai soalsiasat meminta saya membuat satu surat penafian yang saya telah diliwat dialamatkan kepada YAB Perdana Menteri. Sebelum saya diminta menulis surat ini, saya telah disoalsiasat berterusan sehingga pagi. Saya telah disoalsiasat dengan kasar bertalu-talu tanpa henti. DSP Aziz (SP2) ada menyoalsiasat saya. DSP Aziz menyuruh saya mengadakan bukti yang saya telah diliwat oleh tertuduh. SP2 juga bertanya kepada saya bagaimana kejadian liwat itu berlaku dan mengenai latarbelakang saya. DSP Aziz menyoalsiasat saya dengan kasar bertalu-talu tanpa henti dengan nada suara yang tinggi. Dengan nada yang tinggi, DSP Aziz menyuruh saya mengadakan bukti sekiranya tertuduh main buntut saya. Dia juga mengatakan sekiranya saya tidak dapat mengadakan bukti, saya akan ditahan di bawah s 117 sehingga 14 hari dan seterusnya akan ditahan sehingga 60 hari tanpa perbicaraan. Dan saya akan ditahan di bawah ISA selama dua tahun. Selepas saya dikatakan begitu oleh SP2, saya telah mengatakan sekiranya seorang perempuan bolehlah dibuktikan melalui darahnya, saya lelaki saya rasa susah untuk buktikan. Saya juga mengeluh kerana pengakuan bersumpah saya maka saya akan ditahan di bawah ISA. Selepas jawapan saya kepada SP2, SP2 berkata: 'Tahu pun'. Apabila SP2 mengatakan, 'Tahu pun',

kepada saya tangannya menhentak meja dan jarinya menunjuk ke muka saya. Perwatakan SP2 sangat garang dan menakutkan saya. Dia menghentakkan tangannya dengan tiba-tiba tanpa saya sedari. Begitu juga dengan jarinya semasa menunjuk ke muka saya.

Saya disoalsiasat sehingga 18 Ogos 1997 sehingga jam 8 malam. Sewaktu saya disoalsiasat, saya tidak dibenarkan berehat dan disoal bertalu-talu. Apabila saya diminta menulis surat kepada YAB Perdana Menteri, saya tidak bersetuju kerana pengakuan bersumpah saya adalah benar. Sekiranya saya menarik balik, maka saya dianggap berbohong. Tujuan surat adalah untuk menafikan yang saya telah diliwat oleh tertuduh. Pada mulanya, apabila saya tidak bersetuju untuk menulis surat penafian, saya telah ditakutkan dan disoal bertalu-talu. Akhirnya setelah saya diberikan kertas dan pen, saya membuat satu surat ... Saya tidak membuat surat P17 ini atas kerelaan sendiri.

(ii) The obtaining of exhs P20 and P21

On 28 August 1997, Dato Mohd Said and Dato Amir Junus told ACP Mazlan that the accused was not satisfied with exhs P17 and P18 and hence instructed him to get a more committed and convincing public statement. ACP Mazlan met Azizan on the same day at 8.30 pm at the Kelab Golf PDRM Titiwangsa to obtain the letter from him. As ACP Mazlan said:

Apabila saya bertemu dengan Azizan di Kelab Golf, saya perhatikan Azizan memang tertekan (being pressured) di mana beliau telah meluahkan rasa frustration tetapi saya telah memujuk dan cuba menenangi hati supaya mendapatkan surat penafian yang lebih committed. Process memujuk dan menenangi hati beliau mengambil masa hampir dua jam. Akhirnya sekitar jam 11 malam, Azizan bersetuju menulis sepucuk surat menafikan sama sekali yang beliau telah diliwat oleh tertuduh. Beliau bersetuju dan menulis sepucuk surat penafian tersebut lebih kurang jam 10.30 malam dan saya maklumkan perkara itu kepada Dato Amir. Dato Amir ketika itu berada di rumahnya dan beliau telah datang ke Kelab Golf untuk melihat sendiri surat penafian. Sekitar jam 11 malam apabila Dato Amir melihat surat tersebut, beliau telah menelefon tertuduh menggunakan handphonenya sendiri. Dato Amir telah membaca melalui telefon isi kandungan surat tersebut kepada tertuduh di mana saya lihat Dato Amir membuat perubahan kepada surat tersebut. Selepas membuat perubahan ke atas draf surat tersebut, saya diarah oleh Dato Amir supaya meminta Azizan menulis kembali surat yang telah dipinda. Di sini, saya juga terasa tertekan oleh sebab terpaksa merayu kepada Azizan mengubah kembali surat yang ditulis olehnya. Saya berjumpa kembali Azizan yang sedang menunggu di Kelab Golf. Saya jelaskan kepada Azizan apa yang berlaku dan di sini Azizan juga merasa hampa dan dia berkata, once for all, beliau akan turuti permintaan saya. Beliau telah menulis kembali dan dalam surat ini beliau menafikan sama sekali beliau pernah menulis pengakuan bersumpah iaitu ID14C. Di peringkat awal di draf yang pertama, beliau menafikan yang beliau pernah diliwat tetapi kali ini beliau menafikan yang beliau pernah menulis pengakuan bersumpah iaitu ID14C.

The final draft that Azizan signed is exh P19. Exhibit P20 is the typewritten version of it. On the corrections made to the letter by the accused, Dato Amir Junus said:

> Sesampainya saya di Kelab Golf, SP7 telah pun menunjukkan kepada saya surat yang ditulis oleh Azizan. Selain daripada SP7, Azizan juga berada di situ. Saya telah membaca surat yang ditulis oleh Azizan dan seterusnya saya telahpun menelefon tertuduh dan membacakan kenyataan umum yang ditulis oleh Azizan. Melalui telefon, tertuduh telahpun membuat beberapa pembetulan. Di antara pembetulan-pembetulan yang dibuat, jikalau saya masih ingat perkataan seperti 'penafian' mestilah dimasukkan di dalam salah satu paragraph surat itu dan juga 'Azizan tidak pernah menulis pengakuan bersumpah'. Surat yang saya maksudkan ialah surat pengakuan sumpah Azizan (saksi dirujuk kepada ID14C). Yang saya maksudkan ialah ID14C. Tertuduh minta saya menambahkan dalam kenyataan umum Azizan satu perenggan lagi. Selepas menerima arahan-arahan ini, saya telah menyerahkan kenyataan umum yang dipinda oleh saya yang diarahkan oleh tertuduh melalui telefon kepada SP7.

And later said:

> Semasa saya membaca surat ini di pagi 29 Ogos 1997, chop rubber stamp yang diletak di sini tidak terdapat pada surat ini. Perenggan yang ditambah di surat ini ialah para terakhir yang berbunyi, 'Saya merasa kesal di atas apa yang telah berlaku dan berharap dengan penjelasan ini dapat memperbetulkan keadaan.' Para ini telah diarahkan oleh tertuduh semasa saya bercakap melalui telefon dengan tertuduh pada malam 28 Ogos 1997. Perkataan 'penafian' yang dimaksudkan ialah di para pertama barisan 2 '... tidak pernah menulis pengakuan bersumpah ...'.

Azizan's explanation for writing exh P19 is as follows:

> Pada 28 Ogos 1997, saya ada berjumpa dengan ACP Mazlan (SP7). Saya telah dibawa oleh SP7 ke Kelab Golf Titiwangsa. Saya pergi ke Kelab Golf lebih kurang jam 8 malam. Di Kelab Golf, SP7 meminta saya membuat satu surat kenyataan umum yang lebih baik bagi menafikan yang saya diliwat. Maksud 'lebih baik' ialah lebih meyakinkan. Apabila permintaan ini dibuat oleh SP7, saya merasa kecewa kerana sememangnya saya telah diliwat oleh tertuduh. Seterusnya, SP7 telah memujuk saya untuk membuat surat kenyataan umum. ACP Mazlan terus memujuk saya agar saya membuat satu kenyataan umum. Setelah dipujuk, saya membuat satu kenyataan umum. Saya menandatangani surat kenyataan umum tersebut. Setelah saya menulis surat ini, saya telah menyerahkannya kepada SP7. Selepas itu, saya telah diminta untuk membuat sedikit pindaan bagi menafikan yang saya pernah membuat surat pengakuan bersumpah. Tidak ada pindaan-pindaan lagi yang dibuat. Saya diminta menulis semula surat kenyataan umum yang telah dipinda itu. Pada mulanya, saya tidak bersetuju untuk menulis semula surat itu dengan pindaan-pindaannya sebagaimana diminta. ACP Mazlan terus memujuk dan saya membuatnya kerana merasa takut dan tertekan ... Apabila saya menandatangani P20 ini, chop setem getah tidak terdapat pada P20 itu.

After exhs P19 and P20 were handed over to Dato Amir Junus on 29 August 1997 at about 9 am by ACP Mazlan and DSP Aziz, he instructed them to get a public statement from Ummi. ACP Mazlan, DSP Aziz and woman constable Noraini bte Abdullah met Ummi at Room No 1426 in Pan Pacific Hotel at about 10.30 am. In describing how the statement was obtained from Ummi, ACP Mazlan said:

A Apabila saya dan SP2 bertemu dengan Ummi, kita jelaskan kepada Ummi mengenai arahan yang saya terima daripada Dato Amir. Di sini, kami menghadapi satu masalah untuk mendapatkan surat penafian dari Ummi. Ummi adalah perwatakan (strong character). Kami hadapi masalah untuk mendapatkan surat penafian itu. Dari jam 10.30 pagi sehingga 4 petang, Ummi enggan menulis surat penafian. Pada peringkat permulaan, kami
B cadangkan beliau membuat kenyataan akhbar. Kami tahu beliau tidak akan melakukannya. Pada suatu ketika, Ummi menangis. Kami tahu beliau tidak akan membuat kenyataan akhbar tetapi beliau mungkin bersetuju untuk membuat something lesser than kenyataan akhbar. Kami cadangkan satu surat berbentuk kenyataan umum. Ini pun terpaksa melalui proses berdolak dalik. Akhirnya jam lebih kurang 3 petang, beliau telah bersetuju menulis sepucuk
C surat kenyataan umum(saksi dirujuk kepada D29). Inilah kenyataan umum yang ditulis oleh Ummi.

ACP Mazlan and DSP Aziz then took the letter (exh P29) to Dato Amir Junus for his perusal. As Dato Amir Junus said:

Selepas membaca surat ini dan untuk menentukan bahawa kandungannya
D memenuhi kehendak tertuduh, saya telah menelefon tertuduh dan membaca surat ini melalui telefon kepada tertuduh. Pada ingatan saya, tertuduh telah mengarahkan saya untuk membuangkan dua paragraph (saksi dirujuk kepada ID22). Separuh daripada para 2 di ID29 digugurkan. Para 4 di ID29 iaitu 'Rintihan dan peristiwa tersebut ... terjejas' di gugurkan. Ayat 'spekulasi ... negara' digugurkan tetapi ditambah dengan menggantikan '... segera fitnah
E ini.' Para 1 di ID29 juga digugurkan. Saya telah mengubahsuai ID29 ini mengikut kehendak tertuduh.

After the amendments were made, Dato Amir Junus handed over the draft to DSP Aziz to be typed. It was then taken to Ummi for her signature. As ACP Mazlan said:

F Seterusnya Ummi telah meluahkan perasaan tidak puashatinya ke atas kenyataan umum yang ditulis olehnya oleh sebab telah diubahsuai dan dipinda ... Apabila Ummi tidak berpuashati dengan ID22, kami terus memujuk Ummi untuk menandatangani ID22. Akhirnya Ummi bersetuju untuk menandatangani ID22 di samping meminda namanya yang telah tersilap ditaip.

G Ummi was also asked to write a covering letter (exh P21) to the accused. She described the circumstances in which she signed exh P22 in this way:

DSP Aziz telah menyuruh saya membuat suatu kenyataan umum memohon maaf untuk disiarkan secara langsung di semua stesyen TV1, 2 dan 3. Saya tidak bersetuju sama sekali kerana ini mungkin menjejaskan credibiliti saya
H sebagai orang yang tidak mempunyai prinsip. Akhirnya DSP Aziz telah meminta saya membuat satu kenyataan umum secara bertulis. Pada mulanya, saya tidak bersetuju sama sekali kerana seperti yang saya nyatakan pertuduhan saya mempunyai asas yang kukuh untuk diketengahkan. Setelah hampir lima jam di dalam bilik tersebut, saya dipaksa dengan keadaan yang tidak selesa akhirnya saya bersetuju. ... DSP Aziz telah menyatakan kepada saya bahawa Dato Said Awang tidak berpuashati dengan P29 dan dia telah kemukakan satu
I kenyataan umum yang lain yang sudah ditaip untuk saya tandatangan. Mulanya saya tidak bersetuju untuk menandatangani kerana ianya berbeza dengan P29 yang saya tulis. Akhirnya saya telah menandatangani surat yang ditaip setelah dipaksa lagi oleh DSP Aziz.

The evidence of ACP Mazlan and DSP Aziz that they conducted the turning over operation on the instructions of Dato Mohd Said and Dato Amir Junus was not challenged in cross-examination. As a matter of fact, ACP Mazlan agreed to a defence suggestion that in carrying out his duties, he followed the instructions of Dato Mohd Said though he denied a later inconsistent suggestion that he was not telling the truth. Their evidence shows that Ummi and Azizan wrote the letters against their will. This was not challenged in cross-examination. No suggestion was put to Azizan to show that he did not write the letters voluntarily. Such a suggestion was put to Ummi and she said:

> Saya tidak bersetuju bahawa segala penafian yang dibuat oleh saya adalah secara sukarela dan tanpa paksaan.

In my opinion, what was put to Ummi would have been of greater value if ACP Mazlan and DSP Aziz had been challenged on the evidence they gave with regard to the circumstances in which she wrote the letters.

Dato Amir Junus then placed exhs P19, P20, P21 and P22 in an envelope and gummed it. He then wrote the name and address of the accused on the envelope and affixed a stamp on it. He then asked ASP Aziz Ahmad to take the envelope to the post office to have the stamp cancelled which he did. The purpose in having the stamp cancelled was to show that the envelope had been posted to the office of the accused. On 29 August 1997 at about 9.30 pm, Dato Mohd Said and Dato Amir Junus took the envelope to the Official Residence of the accused to be handed to him. Dato Amir then said:

> Tujuan kami menghantarkan envelope itu ke rumah tertuduh kerana tertuduh menghendaki surat itu sampai kepada tertuduh dengan cepat dan selamat. Apabila sampai di rumah tertuduh pada malam itu, saya bersama dengan SP1 sampai ke rumah tertuduh dan telah memberi envelope yang mengandungi surat-surat ID19, ID20, ID21, ID22 dan juga surat yang bertulis oleh Ummi kepada tertuduh. Selepas itu, tertuduh telah membuka envelope itu dan membaca kesemua surat yang ada di dalam envelope itu. Selepas tertuduh membaca surat-surat itu, tertuduh menyatakan kepuasan hatinya.

The Received Rubber Stamp which now appears on exhs P20, P21 and P22 to indicate that the letters were received by the accused's office were not there when Dato Amir Junus placed the letters in the envelope. Suhaime bin Yunus was attached to the accused's office in August 1997. It was his duty to receive and open letters. He affixes the Received Rubber Stamp on all letters that he opens. The stamp that he affixes are those as appearing on exhs P20, P21 and P22. He also inserts a number on the stamp and makes an entry of the number on a register. Exhibits P20, P21 and P22 do not have the numbers and the receipt of these letters is not entered in the register. In the concluding part of his evidence, he said:

> Saya tidak menerima ID20, ID21 dan ID22 pada 30 Ogos 1997.

It was contended by the defence that if the police had, in the course of obtaining the letters from Ummi and Azizan, exceeded their powers, the accused cannot be blamed for it as there was no request on his part to use

whatever method that was used. Dato Mohd Said said in cross-examination that in order to follow the instructions of the accused, they had to arrest Ummi and Azizan. And in re-examination, he said:

> Ummi and Azizan were detained for the purpose of getting the intelligence on the letter that they had written and also to a turning over operation in order to get a denial from them as directed by the Deputy Prime Minister. ID17 and ID18 are the result of the turning over operation.

On this issue, Dato Amir Junus said in his examination-in-chief:

> Pada ketika itu, SP1 telah memberikan arahan kepada SP7 dan SP2 untuk menemuduga Ummi dan Azizan dan mencungkil maklumat-maklumat yang terperinci mengenai ID14 dan mereka ini hendaklah dineutralizekan dan menarik balik semua dakwaan-dakwaan yang dibuat oleh mereka ke atas tertuduh dan proses ini hendaklah dijalankan dalam masa 24 jam. Arahan-arahan yang diberikan oleh tertuduh kepada SP1 dan saya dan arahan-arahan yang saya dan SP1 sampaikan kepada SP2 dan SP7 adalah sama.
>
> Proses turning over dan juga neutralization ini adalah untuk mencapai penarikan balik semua tohmahan-tohmahan yang dibuat oleh Ummi dan Azizan. Yang mengarahkan kami untuk menarik balik semua tohmahan-tohmahan ini adalah tertuduh sendiri. ...
>
> Walaupun arahan-arahan yang dikeluarkan oleh SP1, iaitu turn over dan neutralize, kepada SP2 dan SP7 ini adalah untuk memenuhi kehendak arahan yang dikeluarkan oleh tertuduh. ...

When Dato Amir Junus was asked in cross-examination whether the accused asked him to use the turning over and neutralization process on Ummi and Azizan, he said:

> Apa yang tertuduh menyuruh Special Branch buat terhadap Ummi dan Azizan adalah untuk mereka menarik balik dan menafikan semua dakwaan-dakwaan terhadap tertuduh. Untuk mencapaikan hasrat itu, Special Branch telah menggunakan teknik turning over dan neutralization sebab masa yang diberikan hanya 24 jam sahaja. The accused asked us to do something for them to retract their allegations. He did not make specific reference to the teknik of turn over and neutralization. ... Tidak benar bahawa tertuduh tidak meminta sesuatu dilakukan supaya Ummi dan Azizan mengubah pendirian mereka.

This submission of the defence is unworthy of consideration. It is not the case for the prosecution that the accused asked Dato Mohd Said and Dato Amir Junus to use the turn over operation to obtain the letters and that he is being charged for the use of that method. As I said earlier, there is evidence to show that he directed them to obtain the letters. The time given to them by the accused to make Ummi and Azizan to retract and deny their allegations was only 24 hours. Thus, they used a method known to them to comply with the directions given. It cannot therefore be argued that the police had exceeded their powers as the accused had directed them to do something to make Ummi and Azizan retract their allegations within a short period of time. The evidence shows that Dato Mohd Said and Dato Amir Junus merely used their standard Special Branch turn over and neutralization process in order to comply with the directions of the accused though he did not specify the method of interrogation to be used.

Thus, there is evidence to show that the accused directed Dato Mohd Said and Dato Amir Junus to obtain from Ummi and Azizan written statements addressed to YAB Prime Minister during the period 12 August 1997 to 17 August 1997 in respect of the first and third charges and public statements on or about 27 August 1997 in respect of the second and fourth charges denying the allegations that they had made against him and that the statements were obtained as directed by the accused.

The advantage obtained by the accused

(1) The Law

In its submission, the defence, while acknowledging that the object of Ordinance No 22 is to widen the scope against bribery and corruption and to make penal offences not covered by the Penal Code or the Prevention of Corruption Act 1961, went on to argue that there must be a limit to its ambit and application. It was contended that in any charge under s 2(1) of Ordinance No 22, there must be a pecuniary element. Thus, in order for any advantage obtained to come within the section, it must be one which is in the form of money or money's worth, property or valuable instruments. The prosecution contended that the words 'other advantage' in s 2(1) of Ordinance No 22 have a wide meaning and referred to *Haji Abdul Ghani bin Ishak & Anor v PP* [1981] 2 MLJ 230 and *Nunis v PP* [1982]2 MLJ 114.

The meaning of the expression 'pecuniary or other advantage' has been the subject of intense judicial scrutiny in several judgments. In analysing the meaning of the word 'pecuniary' in s 2(1) of Ordinance No 22, Wan Yahya J (as he then was) said in *Haji Abdul Ghani bin Ishak & Anor v PP* [1981] 2 MLJ 230 (at p 235):

> In my view, any interest relating to money or money's worth, any interest that could be converted into money, or any interest the object of which is to make money falls in the category of pecuniary interest.

Raja Azlan Shah CJ (Malaya) (as His Majesty then was) made it clear in *Haji Abdul Ghani bin Ishak & Anor v PP* that the word 'other' in the expression 'pecuniary or other advantage' is not caught by the ejusdem generis rule. This is what his Lordship said (at pp 246–247):

> It is therefore no longer in dispute that the object of the Ordinance is wide so as to bring to book corrupt politicians and public officers who abuse their public positions or office for their pecuniary or other advantage. The use in the Ordinance of the words 'pecuniary or other advantage' is significant. The word 'other' appearing in the context of the definition is not caught by the ejusdem generis rule. We are fortified in this view by the statement of Lord Diplock to this very effect in *Quazi v Quazi* [1979] 3 All ER 897, 902 and it might perhaps be useful to set out this part of his judgment in extenso:
>
> > 'It was not the husband's case that the divorce by talaq was obtained in Pakistan by proceedings that were judicial; it is the reference in the section to other proceedings on which he relied. The argument for the wife is that these words, which on the face of them would include any proceedings that were not judicial, are to be read as limited to

A proceedings that are quasi-judicial, by appliction of the ejusdem generis rule. This involves reading other as if it meant similar and, as it seems to me, is based on a misunderstanding of that well-known rule of construction that is regrettably common. As the Latin words of the label attached to it suggest, the rule applies to cut down the generality of the expression other only where it is preceded by a list of two or more
B expressions having more specific meanings and sharing some common characteristics from which it is possible to recognize them as being species belonging to a single genus and to identify what the essential characteristics of that genus are. The presumption then is that the draftman's mind was directed only to that genus and that he did not, by his addition of the word other to the list, intend to stray beyond its boundaries, but merely to bring within the ambit of the enacting words
C those species which complete the genus but have been omitted from the preceding list either inadvertently or in the interests of brevity. Where, however, as in s 2 of the Recognition Act, the word other as descriptive of proceedings is preceded by one expression only that has a more specific meaning, viz judicial, there is no room for the application of any ejusdem generis rule; for unless the draftsman has indicated at the very least two
D different species to which the enacting words apply, there is no material on which to base an inference that there was some particular genus of proceedings to which alone his mind was directed when he used the word other, which on the face of it, would embrace all proceedings that were not judicial, irrespective of how much or little they resembled judicial proceedings.'

E Therefore the word 'advantage' is also to be construed widely.

I also refer to *Statutory Interpretation* (4th Ed) by Pearce and Geddes where the learned authors say (at p 102):

The absence of a genus is seen in acute form where only one word appears
F before the general expression. In *Allen v Emmerson* [1944] KB 362, the court had to consider the scope of the expression 'theatre or other place of entertainment'. It held that the specific reference to 'theatre' did not limit the general words to places of the same genus as theatres. A number of Australian decisions have adopted a like approach in regard to the scope of the words 'building or other place'. The 'place' does not have to be something akin to a
G building: *Lake Macquarie Shire Council v Aetes* [1977] 1 NSWLR 126; *Plummer v Needham* (1954) 56 WALR 1. Compare *Bond v Foran* (1934) 52 CLR 364 where Dixon J at 376, in considering the expression 'house, office, room, or other place' held that 'place' must be something ejusdem generis with the words which preceded it. There a genus was created and limited the general expression.

H Thus, the meaning of the word 'advantage' cannot be construed in line with the meaning of the preceding word 'pecuniary'. As Raja Azlan Shah CJ (Malaya) (as His Majesty then was) said in the passage that I have referred to earlier, the word 'advantage', must be construed widely (see also *PP v Datuk Tan Cheng Swee & Ors* [1979] 1 MLJ 166). In spelling out the meaning of the word 'advantage' Abdul Hamid FJ (as he then was) while
I sitting in the Federal Court in *Nunis v PP* [1982] 2 MLJ 114 said (at pp 116–117):

> ... What consitutes an advantage within the ambit of s 2(1) of the Ordinance and as defined by the words 'corrupt practice' would depend on the facts of each particular case. An advantage to a public officer who uses his public position may not necessarily be an advantage to another public officer who similarly uses his public position. The circumstances surrounding must be considered, for instance, the mode and manner in which the public position is so used; the nature of relationship between such public officer and the party in whose favour the public position is used; the interest the public officer shows or may have in the matter and the benefit that may be accrued to the public officer, pecuniary or otherwise or for money or money's worth. It is difficult, if not impossible, to specify exhaustively the exact circumstances under which the use by a public officer of his public position can be said to be to his advantage.
>
> To my mind, it is the clear intention of the legislature that the words 'other advantage' should be given a very wide meaning covering the variety of situations depending on the facts of each case. To consider otherwise would not indeed promote or give effect to the intention of the legislature and the object underlying the provision.
>
> ...
>
> I also refer to the *Shorter Oxford English Dictionary* (3rd Ed) which sets out the meaning of the word 'advantage' to include inter alia: 'a favouring circumstances', 'benefit' and 'to benefit, profit', 'to be beneficial to, etc'.
>
> There is to my mind no mystery in the word 'advantage'. The expression is to be construed widely to include a benefit or gain of some kind other than pecuniary. If a public officer abuses his public position to advance a private or personal interest whereby it is accrued to him, either a pecuniary gain or benefit or something which is personally beneficial to him, even though someone else may derive direct benefit from it, that advantage is, in my view, the kind of advantage that the legislative has in mind.

In *Salvation Army v Canterbury Hotel Union* (1985) 2 NZLR 366, it was held that an advantage accrues when it produces a more favourable situation than otherwise would have been the case. It must also be observed that where general words follow specific reference to a matter, it may not have been intended for the general words to be limited in their operation at all. In *Rands v Oldroyd* [1959] 1 QB 204, for example, the interpretation of s 16 of the Local Government Act 1933 was in issue. It required a member of a local authority who 'has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter' to disclose such interest and refrain from voting at any meeting at which the matter was being considered. The court held that the section was intended to cover all matters where a member might have a conflict of interest and the general words should not be regarded as limited by the specific matters mentioned.

In the case of Ordinance No 22, it is its object to strike at any act done by a Member of the administration or public officer whereby he has used his public position or office for his pecuniary or other advantage. The object and purpose of Ordinance No 22 therefore precludes the limitation of the words 'other advantage' by the specific word 'pecuniary'. In my opinion, therefore, the argument advanced by the defence on the meaning of the words 'other advantage' in s 2(1) of Ordinance No 22 has absolutely no merit.

A *(2) The evidence adduced*

I shall consider the advantage contemplated by the first and third charges together as they are similar and that in respect of the second and fourth charges together for the same reason.

B (a) First and third charges

In order to appreciate the advantage obtained by the accused in respect of these charges, it is necessary to bear in mind the role he played in procuring the written statements, that is to say, exhs P17 and P18.

Exhibit P14A, B and C had been publicly circulated to some extent. C Exhibit P15 which contained allegations against the accused, some of which were similar to those in exh P14A, B and C, was also being circulated publicly. On 12 August 1997, the accused asked Dato Mohd Said and Dato Amir Junus to look for Ummi and Azizan in order to find out more about exh P14A, B and C and why it was written. The very next day, he asked them to locate Ummi and Azizan quickly and 'gempar' them so that they D will not circulate the allegations in exh P14A, B and C. Two days later, he showed them exh 15. They asked him to make a police report. Initially, he did not want to do so as he did not want the case to be investigated by the CID and because of the adverse publicity it would generate as he is a politician and the Deputy Prime Minister. He finally agreed to make a E report but did not want the matter to go to court as in that event it will be publicized. On 16 August 1997, the accused once again told them to trace Ummi and Azizan as soon as possible. After their arrest on 17 August 1997 at about 11 pm, the accused wanted to see Dato Mohd Said and Dato Amir Junus immediately. When they met him at his Official Residence at about 12.30 am on 18 August 1997, he directed them to get a retraction of the F allegations made by Ummi and Azizan within 24 hours. He repeated his request that he did not want the two to be detained for long and that their case should not be brought to court and that he did not want any publicity. At about noon on the same day, Dato Mohd Said and Dato Amir Junus were again called by the accused to his Official Residence. They told him that Ummi and Azizan had changed their mind and were willing to retract G the allegations. He told them that Ummi and Azizan should write a letter of denial to YAB Prime Minister. The letters written by Ummi and Azizan are exhs P17 and P18. Two days later on 20 August 1997, Dato Mohd Said handed exhs P17 and P18 together with his report, exh D25, to YAB Prime Minister recommending that the matter be closed.

H The frequency and urgency with which the accused summoned Dato Mohd Said and Dato Amir Junus to give them instructions and the speed at which he wanted the retraction letters show that he was gravely affected by the allegations in exh P14A, B and C. They will generate adverse publicity against the accused as he is a politician and the Deputy Prime Minister. This is made evident by the fact that in his meetings with Dato Mohd Said and I Dato Amir Junus, he told them repeatedly that he did not want any publicity. He instructed them to 'gempar' Ummi and Azizan so that they will not circulate the allegations contained in exh P14A, B and C. He did

not want them to be detained for long. Thus, he wanted the matter to be closed as soon as possible so as to avoid any adverse publicity. His initial reluctance to make a police report amplifies this. He only agreed to do so upon certain terms. He wanted the written statements to be addressed to YAB Prime Minister. The letters were obtained and forwarded to YAB Prime Minister. The chronology of events clearly indicates that the accused wanted to prevent the allegations from being publicized so as to avoid any form of embarrassment to himself by getting the written statements from Ummi and Azizan. Once they write these letters, they would not be able to proceed any further with their allegations by virtue of their change in stand. The very fact of having written the letters will deny them the opportunity of repeating the allegations. The letters have therefore saved the accused from embarrassment. The corollary is that the accused's position and dignity are not affected. This is because the letters had placed the accused in a more favourable position than would have been the case if there had been no such letters. The letters negate the effect of exh P14A, B and C and its further circulation and operate as a favourable circumstance for the personal benefit of the accused as they save him from embarrassment. The result is the same whether the allegations are true or false as they are still allegations as such. To my mind, this is a more substantial benefit than that held to be so in *Nunis v PP* [1982] 2 MLJ 114 which, as described by Abdul Hamid FJ (as he then was) at p 117, is as follows:

> It is clear from the evidence that the respondent abused his public position when he assisted or gave aid to his brother-in-law. It was beneficial to him personally that by so doing he could provide benefits to close members of his family. It was undoubtedly a comfort to him to be able to effect financial gain to them or their company. To my mind, an act on the part of the respondent was an act of showing favour to his sister's husband or the brother-in-law to effect financial advantage to him.

The advantage obtained by *Nunis* in that case was the derivation of comfort by effecting financial gain to his relatives. In this case, the accused gained direct comfort by procuring the written statements in respect of the allegations against him.

The defence contended that there was nothing wrong in the accused seeking to save himself from embarrassment by having Ummi and Azizan to deny their allegations and added that:

> ... embarrassment can be caused by allegations which are true as well as by allegations which are false. It is a fact that many people do not sue for defamation as they want to avoid embarrassment being caused to them by the defamatory matter being published even though the defamatory matters published are not true. To most people, it would be more preferable to get the person responsible for publishing the libel or slander to apologize without going to court in order to avoid the attendant adverse publicity. If they do not go to court, they get the people responsible for the publication of the defamatory matters to apologize or retract the matter. There is nothing legally or morally wrong with that. There is nothing wrong for a person to take steps to correct an injustice. That is the position where the allegation is not true. If it is true and discloses an offence, then the use by the public officer of his

A public position in order to get the allegation retracted would be for the purpose of protecting himself from any criminal action. Such use of public position is for a corrupt or dishonest purpose. There is a difference between seeking to have a true and a false allegation retracted. In the case of a true allegation, what is sought to be done is to cover up or conceal a legal wrong. In the case of the untrue allegation, what is sought to be done is to obtain a
B remedy for an injustice.

The advancement of the submission on the basis of a distinction between the truth and the falsity of the allegations is faulty as that is not in issue in the case. Be that as it may, I agree with the argument that it is proper for a person to have a defamatory matter against him retracted in order to avoid
C the embarrassment of going to court so as to save himself from the attendant adverse publicity. But this is subject to an important injunction. Such a person must not take the law into his own hands to resolve the problem as, for example, by beating up the person concerned to retract the defamatory matter. He could approach the person himself in a recognized manner to resolve the problem or appoint an advocate and solicitor to do so. I would
D also agree that if a person lodges a police report on the matter and requests the police to investigate thoroughly, he does no wrong. Thus anything that is done must be within the confines of the law. The evidence shows that the accused went beyond the permissible limits of the law. The charges in this case relate to a Deputy Prime Minister and Minister of Finance using the police against certain individuals in a purely personal matter. The directions
E that he gave to Dato Mohd Said and Dato Amir Junus to have the allegations retracted show that he had abused his position. The manner in which he wanted the allegations to be retracted is not a lawful way of doing so. I am therefore of the view that the argument raised cannot be sustained.

F (b) Second and fourth charges

On 15 August 1997, SAC Musa was handed exh P15. On 18 August 1997, he caused a search to be made in Ummi's office and Azizan's house from where various documents were recovered. On 19 August 1997, Dato Amir Junus gave SAC Musa copies of exhs P17, P18 and P14A, B and C. He said
G that upon receipt of the latter, he wanted to continue with the investigation in order to find out the truth of the allegations made against the accused. Thus on the same day, he recorded a police statement from the accused who denied the allegations. On 30 August 1997 the accused, at a meeting with SAC Musa, Dato Ismail Che Ros and the Honourable Tan Sri Mohtar Abdullah, inquired from SAC Musa about the investigation being carried
H out on exh P15. SAC Musa told him that the police would carry out a detailed investigation to ascertain whether the allegations were true or not and that the investigation was still at an early stage and not completed yet. The accused said that it was not necessary to investigate into the matter as it was contrary to YAB Prime Minister's decision that it has been settled and that it was a slander. The accused also said that he did not want any action
I to be taken against Ummi and Azizan.

On 2 September 1997, SAC Musa informed ASP Zull Aznam to get ready Azmin, Shamsidar, Dato Nallakaruppan, Aton and ASP Zull Aznam

himself for the purpose of recording their statements. His purpose was to find out their relationship and to take any other statement that they may wish to give. He informed ASP Zull Aznam about his purpose in wanting to record the statements whereupon ASP Zull Aznam told SAC Musa that he will contact him later. ASP Zull Aznam later informed SAC Musa that the accused wanted to meet him. When SAC Musa met the accused, the latter asked him what was the use of his recording statements from the witnesses as Ummi and Azizan had written letters to him denying the allegations. SAC Musa replied that he wanted to record their statements in order to complete his investigation before submission to the Attorney General. The accused then gave him exhs P20, P21 and P22 and instructed him to stop the investigation. SAC Musa then reminded the accused of the Attorney General's instructions that all investigations on government officers and leaders have to be forwarded to him. The accused instructed SAC Musa not to send the investigation papers to the Attorney General. On 3 September 1997, SAC Musa showed the denial letters to Dato Ismail Che Ros. They decided to send the investigation papers to the Attorney General with a recommendation to take no further action on the matter. On 8 September 1997, the Attorney General agreed after having read the denial letters. SAC Musa said that the letters influenced him to recommend that no further action be taken in the case even though the investigation was not complete as the documents contained a denial of the allegations. When asked in cross-examination why he recommended that no further action should be taken in the case, SAC Musa said:

> Saya mengesyorkan kes in di NFA berdasarkan surat-surat yang saya terima, iaitu P17, ID18, P20, ID21 dan ID22 yang diserahkan kepada saya oleh tertuduh dan juga arahan tertuduh supaya memberhentikan siasatan saya.

He said that without those letters, he would have carried out a more thorough investigation into exhs P16, P14A, B and C and that if he had found the allegations in those documents to be true, he would have recommended that the accused be prosecuted. At that time he did not know the circumstances in which Ummi and Azizan had prepared the letters. He also did not know about the involvement of the Special Branch in the preparation of the letters then. He came to know the manner in which the letters were prepared only when he was investigating into the report on *Buku 50 Dalil* in 1998.

To a question by the defence, SAC Musa said that on 30 August 1997 he met the accused in his office. It was not put to him that he did not meet the accused on that day. With regard to what transpired at this meeting, SAC Musa was cross-examined on the basis that the accused was merely echoing YAB Prime Minister's statement in exh ID23 that the matter had been closed. It goes as follows:

> Question: When you met accused at his office, you told the court that he said to you that there is no need to investigate further because the Prime Minister had considered the matter closed.
>
> Answer : Tertuduh ada beritahu pada saya bahawa sekiranya saya meneruskan siasatan ianya bercanggah dengan kenyataan yang

A dibuat oleh Perdana Menteri bahawa kes ini telah selesai dan perkara ini dianggap sebagai fitnah.

Question: Even if he had said that he was merely echoing what the Prime Minister had said.

Answer : Benar. Tertuduh merujuk kepada statement yang dibuat oleh Perdana Menteri. ...

B Question: In this statement, the Prime Minister had said that the matter is closed.

Answer : Mengikut akhbar ini, ada disebut oleh Perdana Menteri yang menyatakan perkara ini telah ditutup.

Question: Accused being the Deputy Prime Minister had to abide by what the Prime Minister had stated.

C Answer : Itu saya tidak tahu.

SAC Musa said that he did not consider YAB Prime Minister's statement as a direction to him to close the case. The accused's reliance on YAB Prime Minister's statement to the effect that the matter is closed shows that he had D in fact told SAC Musa that it is not necessary to investigate into the matter, as otherwise, there is no relevance in referring to the press statement.

With regard to the meeting on 2 September 1997, it was put to SAC Musa that the accused never told him not to send the investigation papers to the Attorney General. In reply, he said:

E Saya tidak setuju bahawa tertuduh tidak mengarahkan saya untuk tidak menghantar kertas siasatan kepada Peguam Negara.

He did not agree with a defence suggestion that:

... saya tidak disuruh oleh tertuduh supaya jangan menyiasat kes ini.

F When he was asked whether he agreed that after perusal of the documents and after consulting Dato Ismail Che Ros, he decided that no further action is to be taken on the investigation, he said:

Lima dokumen yang saya terima telah mempengaruhi saya untuk mencadangkan siasatan di dalam kes ini di NFA. Saya bersetuju selepas meneliti kelima-lima dokumen yang saya terima, saya telah mengesyorkan G siasatan di dalam kes ini di NFA. Saya juga telah kemudiannya mengesyorkan kepada Peguam Negara untuk siasatan ini di NFA. Peguam Negara telah bersetuju di atas cadangan saya untuk NFA kes ini.

To a defence suggestion as to whether the accused told him that YAB Prime Minister had told the accused, that is to say, 'Sorry that Aziz Shamsuddin H was involved. I should have sacked him. But as I have said, the case is closed,' SAC Musa said:

Tertuduh tidak memberitahu saya yang PM memberitahu perkara-perkara yang disebutkan oleh peguam. Tidak benar bahawa tertuduh memberitahu saya perkara ini pada 2 September 1997.

I The line of cross-examination shows that the defence did not challenge the fact of SAC Musa having met the accused on 30 August 1997 and 2 September 1997. His evidence that the accused handed to him exhs P20, P21 and P22 on

2 September 1997 was also not challenged. He agreed with the defence suggestion that these documents and exhs P17 and P18 influenced him to recommend that no further action be taken on the investigation. What was suggested to him was only that the accused never told him to send the investigation papers to the Attorney General and that the accused did not tell him not to investigate the case. These suggestions were denied.

There is therefore evidence to show that SAC Musa met the accused on 30 August 1997 and 2 September 1997 and that the accused handed over exhs P20, P21 and P22 to SAC Musa and gave the instructions as testified by him.

It must be observed that the investigation concerned serious allegations against the accused. Despite the denial of the allegations by the accused in his police statement to SAC Musa on 19 August 1997, the investigation did not come to an end as SAC Musa wanted to record further statements. It was SAC Musa's intention to record these statements that prompted the accused to make use of the denial letters to stop the investigation from proceeding any further. He succeeded in doing so. I say this because the denial letters that the accused gave SAC Musa caused the investigation to end abruptly. This is made evident by the fact that the letters influenced SAC Musa to recommend that no further action be taken in the case even though the investigation was not complete. It is superfluous to state that an investigation into the allegations clearly involves the accused directly as the allegations were against him. As the investigation was brought to an abrupt end, there will be no further inquiry into the allegations. The pre-mature termination of the investigation is an advantage to the accused as it thereby prevents the relevant authorities from making a decision on a possible prosecution. The accused has therefore saved himself from any criminal action by using exhs P20 and P22 which had been unlawfully obtained. This brings into sharp focus the contention of the defence that the accused could not have been prosecuted if the allegations are not true with the result that he would have obtained no benefit when the investigation was stopped. The submission requires a consideration of whether the accused would have obtained an advantage if no criminal action is ultimately taken against him by virtue of the allegations being found to be false at the proper conclusion of the investigation. To my mind, this does not alter the advantage obtained by the accused in any way. It must be reiterated that the advantage obtained is only one of the elements involved in the charges. Thus, it must not be read in isolation. It must be read together with the manner in which the public statements were obtained. Viewed in that light, it will be seen that the investigation came to an end as a result of the use of the denial letters obtained unlawfully on the direction of the accused. The investigation was therefore stopped by unlawful means. One cannot adopt an illegal course of action to obtain a benefit in the belief that he is entitled to it. He has to allow law and order to take its normal course. Be that as it may, the argument advanced had in fact been considered in *PP v Dato Haji Mohamed Muslim bin Haji Othman* [1983] 1 MLJ 245 where the accused was charged for having been present at a

meeting in respect of a matter in which he had an interest. It was argued that his presence at the meeting would have made no difference to the approval of his application. In reply to this, Hashim Yeop A Sani J (as he then was) said at pp 248–249:

> A number of witnesses both prosecution and defence said that they took no objection to the presence of the accused. In my view, the fact that no one took objection to the presence of the accused at that meeting does not alter the position in law. Nor the fact that according to some witnesses his presence would have made no difference whatsoever and that the application would have been approved anyway.

I was therefore unable to agree with the argument advanced by the defence.

Thus there is evidence to show that the accused had obtained an advantage in respect of the four charges as contemplated by them.

FINDING

I was therefore satisfied that the prosecution had made out a prima facie case to show that the accused, whilst being the Deputy Prime Minister and Minister of Finance, had in such capacity committed corrupt practices in respect of the four charges preferred against him within the meaning of s 2(1) of Ordinance No 22. I then called upon the accused to enter his defence. When the three alternatives were explained to him, he elected to give evidence on oath.

THE CASE FOR THE DEFENCE

The accused gave evidence over a period of seven days. I shall summarize his evidence as given on the various dates.

EXAMINATION-IN-CHIEF

8 February 1999

The accused became an UMNO member in 1967 but was active only from 1982. He became UMNO Youth Chief in 1982 and UMNO Vice-President from 1987 to 1993 when he rose to become the Deputy President. In 1982, he was appointed as a Deputy Minister in the Prime Minister's Department; in 1983 as Minister of Culture, Youth and Sports; in 1984 as Minister of Agriculture; in 1986 as Minister of Education; in 1991 as Minister of Finance and in 1993 as Deputy Prime Minister. In August 1997, he was the Deputy Prime Minister and Minister of Finance. He was also the Chairman of various cabinet committees, including the Jawatankuasa Pengurusan dan Keutuhan Kerajaan. This committee receives complaints relating to corrupt practices. As the accused said:

> Semua complaint yang dibuat telah dimajukan kepada BPR. BPR akan menyiasat dan dari masa ke semasa memberi laporan kemajuan siasatan kepada Perdana Menteri dan dalam beberapa kes kepada saya sendiri kerana saya Pengerusi Jawatankuasa ini dan juga persepsi masyarakat bahawa jika ada aduan rasuah yang serius lebih baik dimajukan kepada pengetahuan saya

supaya kes itu tidak ditutup dengan mudah. Apa yang dimajukan oleh BPR kepada Perdana Menteri atau saya berikutnya ianya laporan kemajuan siasatan. Laporan ini selalunya memberikan kemajuan siasatan sama ada kes itu dianggap serius atau tidak. Akan tetapi untuk memberikan keputusan mengambil tindakan atau tidak akan dirujuk kepada Jabatan Peguam Negara. Rujukan ini dibuat oleh BPR kepada Jabatan Peguam Negara.

Prior to and after 1997, Dato Mohd Said and Dato Amir Junus used to see the accused frequently to brief him on the latest political and economic issues and the general public reaction to government policies and the leadership. As the accused said:

> My meetings with the Special Branch were once a month on the minimum. There were occasions when we had more meetings. Because of my busy schedule, I normally see them at home after a function. This is not an unusual practice as I meet other government officers and ministers at home at night. It could be from 9.30 pm to 10 pm and can even be later. The meetings with the Special Branch were cordial and friendly like most of my meetings. I have also met the Special Branch officers, especially Dato Mohd Said in my office on a few occasions.

A few days before exh P14A, B and C came to his knowledge, the accused met YAB Prime Minister who told him that he had received a letter containing some wild allegations. The accused then added:

> He advised me to read and destroy. I reiterate that he said learn from his experience and ignore such malicious allegations. I brought the letter to my office, read it and because Azmin is Ummi's brother, I confided in him. I asked him to shred the letter after reading it. He told me that he had shredded it.

With regard to exh P14A, B and C, he said:

> P14 was the first time that Ummi made allegations against me. ... I cannot recall how P14A, B and C came to my knowledge. But I can recollect that the first serious discussion on P14 was when Dato Mohd Said and Dato Amir Junus came to see me.

On 11 August 1997, Dato Mohd Said saw the accused in the morning for a scheduled briefing. He came alone. After the briefing, the accused asked him to stay back. The accused asked him whether he was aware of exh P14. At that time, the accused had been told of this letter but had not seen it. As the accused continued:

> He told me that he was aware and that he will find out and give me a briefing later. He mentioned that he would bring with him PW11. On that morning, we did not have the time to discuss the contents of the letter.
>
> PW1 and PW11 came to brief me either that night or the following night (witness refers to his personal diary for 1997). The meeting on 11 August 1997 was at 8.45 am. Thereafter, the entries are not in the diary as the meetings were very private.

At the next meeting, Dato Mohd Said and Dato Amir Junus informed the accused that the IGP had already received exh P14A, B and C from Dato Seri Megat Junid. He had a look at the letter and told them that it was not the letter that he had received from YAB Prime Minister. He then said:

A They expressed their concern. The timing was to coincide with the UMNO General Assembly. I did not take the matter very seriously and told them about the Prime Minister's advice. I considered the allegations to be malicious, scurrilous and irresponsible. I denied the allegations vehemently. But they said to me that it is not the allegations they are interested in but they suspect attempts by some politicians to smear my reputation. That was when B I said to them that I agree with their suggestion that it must be investigated thoroughly. I think PW1 said deeply. They told me that the IGP had already received the letter. As they came to see me after their meeting with the IGP, my impression was that the IGP was fully aware of what they intend to do. PW1 and PW11 were concerned because they believed that there were other personalities involved in the writing of the letter. We must appreciate that the discussion I had with PW1 and PW11 were very frank and open. They were of C course very concerned. The Special Branch was concerned because they felt that this issue relates to the security of the country and an attempt to smear the reputation of the leaders. PW1 and PW11 were keen to investigate to find out the personalities involved and those orchestrating from behind. I agreed with them because I know fully well the malicious interest of the writers. I do accept that I have political foes who would stop at nothing to achieve their D agenda. We did discuss P15. But I am not sure whether it was on the 11th or at the following meeting. I have seen P15 before. I first saw it on the 11th or at the following meeting. Some of the allegations in P15 are similar to the allegations in P14. That is why we discussed P14 and P15 together with PW1 and PW11. P15 was brought to my attention by either PW1 or PW11.

E With regard to the lodging of the police report, exh P16, the accused said that Dato Mohd Said proposed that he should lodge a report in order to facilitate investigations. Initially, he did not agree to do so as there are hundreds of such letters and YAB Prime Minister had advised him to ignore such letters. As the accused continued:

F Finally, I agreed to make a report. I agreed because I trusted PW1 when he said that this is critical because we should not allow irresponsible elements to proceed with such malicious allegations and to find out the truth including those conspiring with them. When I decided to lodge a police report, I thought that the investigation will be confined to the letter and the conspirators. On the specific allegations, I told them in no uncertain terms that these were fabrications and I denied vehemently.

G The accused then discussed the matter with ASP Zull Aznam so that the latter could prepare a draft and lodge the report. The accused then said:

The making of the report and its contents were on the advice of PW1 though the draft was made by ASP Zull Aznam.

H At the time of the making of the report, there was no discussion or suggestion by the accused or Dato Mohd Said or Dato Amir Junus on the arrest of Ummi and Azizan. As the accused said:

What they told me was that they were searching for them. My understanding then was that they wanted to talk to these people.

I After P16 was lodged, I left it to the police to handle the matter.

On 17 August 1997, the IGP informed the accused that Ummi and Azizan had been arrested. According to the accused, the IGP:

> ... said that since PW1 and PW11 were with him, he thought it would be better for them to come and see me in order to brief me on the latest situation. They came to my Official Residence.

They gave him a briefing. The accused then said:

> Since Ummi and Azizan were arrested, I must admit that I was a bit concerned that they should not be detained for long. I did agree initially with PW1 that this matter should be investigated but once I knew of the involvement of Dato Aziz and Dr Restina, I was keen that they should investigate it thoroughly and to get to the bottom of it.

On the following night, Dato Mohd Said and Dato Amir Junus briefed the accused on the latest situation. They told him that Azizan had regretted what he had done, had retracted the letter and wanted to see the accused to apologize to him. On the other hand Ummi, even though she had retracted the letter, did not propose to see him. Though initially not keen, the accused later agreed to see Azizan. The meeting between the accused and Azizan was brief. As the accused explained:

> I felt sorry for him when he said that he was confused. At first he said he did not sign. Then he said he signed but did not read it. I was not pleased with his explanation. I just listened to what he said. What struck me was when he said that he was sorry and 'salah besar' for making the allegations and 'saya murtad'. When I heard these words, I said: 'Okaylah, baiklah', as I thought he was really genuine in making the apology. So he left.

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The accused explained why he did not want Ummi and Azizan to be detained for long. As he said:

> I told the police not to detain Ummi for too long because Ummi happens to be the sister of my private secretary, Azmin Ali and the family is known to me. Similarly, Azizan was my wife's former driver and his family is also known to us and the police informed me that their arrest was the result of my police report.

On his discussions with Dato Mohd Said and Dato Amir Junus up to 17 August 1997, the accused said:

> Prior to and up to the 17th, my discussions with PW1 and PW11 were friendly and informal. There were suggestions made by them on what they thought the police have to do. That was why I was advised to lodge this report initially. But knowing police and some of their tactics from my earlier experience of being detained a long time ago, I do not want them to use rough methods, bully which seems to be the practice now. That was why I told them as confirmed by PW1, firstly, janganlah tahan lama-lama and, secondly, gempar sikit-sikit cukuplah (witness referred to construction of gempar by PW1 and PW11). By the phrase 'gempar sikit-sikit' is like what we say to our children, like behave yourself, do not be naughty. PW11 has been too long in Sabah. The phrase was used in the context of a friendly and informal session. They came out with the story of the grand design of some political personalities out to finish me. So in the midst of that discussion, I suggested that they should investigate fully and get the truth out from Ummi and Azizan.

The accused said that before Dato Mohd Said and Dato Amir Junus came to his house on the night of 17 August 1997, the IGP spoke to him and told him of the arrest of Ummi and Azizan. The IGP considered it as a security issue and therefore assigned Dato Mohd Said and Dato Amir Junus to brief him. When the IGP spoke to the accused on the telephone, the accused had just arrived from Langkawi at about 11 pm. With regard to the manner in which the meetings between him and Dato Mohd Said and Dato Amir Junus were arranged, the accused said that there were occasions when he invited them to meet him but on many occasions Dato Amir Junus would call ASP Zull Aznam for an appointment.

On 18 August 1997, he met Dato Mohd Said and Dato Amir Junus at about lunch time at his Official Residence. According to him:

> On that day, they informed me of the results of the investigation of Ummi and Azizan and Ummi and Azizan had indicated that they regretted their actions and that they were made use of and they have written letters to that effect. I was not sure whether the letter had been written or in the midst of writing.

He said that they came to see him again on that night. They brought with them the letters written by Ummi and Azizan. The letters are exhs P17 and P18. He said that when he received these letters he had no idea as to how they were obtained. He then said:

> I assumed as per my instruction that the police should do what was right and proper.

Up to that time, the question of criminal action against him never arose. On being asked whether any such action was in contemplation at any time, he said:

> To my knowledge based on my discussions with PW1 and PW11 and later on even with my discussions with the Attorney General this was never ever contemplated or considered. I was the complainant and victim. It would therefore be ludicrous to imagine criminal action to be preferred against me.

The accused also said that he never ever suggested that he should meet or see Azizan. He also did not suggest that he should question Azizan at the office of the Special Branch.

On 20 August 1997, Dato Amir Junus made an appointment through ASP Zull Aznam to see the accused. At that meeting, Dato Mohd Said and Dato Amir Junus informed the accused of their report (exh D25) to YAB Prime Minister and also handed to him an unsigned copy of the report. On 25 August 1997, he read a statement made by YAB Prime Minister in the newspapers (exh D23).

The accused said that after exhs P17 and P18 were handed to him, exhs P14 and P15 were being widely circulated. By 27 August 1997 the latter two letters had become public knowledge. On that day, Dato Mohd Said and Dato Amir Junus came to see him. They told him that they will have to deal with the issue. As he said:

> They considered several options, that is, either to suggest that Azizan and Ummi speak directly to the media or come up with a public statement. I had

> to remind them that because of the Prime Minister's suggestion that I should completely ignore the issue of the allegations, so I had to leave it to PW1 and PW11.

He said that there was no telephone conversation between him and Dato Amir Junus on the night of 28 August 1997. He did not suggest to Dato Amir Junus for any amendments to be made to exh P29 which, he said, is a very good statement. When asked why Dato Amir Junus would lie when he said that amendments were made by him, the accused said that he believed Dato Amir Junus was upset with him as he had taken objection to businessmen being brought along by Dato Amir Junus to see him.

On 29 August 1997, exhs P20, P21 and P22 were handed to the accused.

On 30 August 1997, the accused had a meeting in his office with the Attorney General and Dato Ismail Che Ros. As to whether SAC Musa was present at the meeting, the accused said:

> This is noted in my diary as '10 pagi AG dan Dato Ismail Che Ros'. It is not stated in my diary that SAC Musa also came. I also checked with my PA Azmin and he said that he would put down the name if Musa had attended the meeting.

At the meeting, the accused had a short discussion with the Attorney General and Dato Ismail Che Ros. He relayed to them the statement from YAB Prime Minister as reported in the newspapers on 25 August 1997. After Dato Ismail Che Ros left, the Attorney General expressed concern over the irresponsible and malicious attacks made against the accused.

On 31 August 1997, the accused had a meeting with YAB Prime Minister who told him, 'Sorry that Aziz was involved. I should have sacked him.'

On 3 September 1997, Dato Amir Junus made an appointment to see the accused through ASP Zull Aznam. He and Dato Mohd Said then met the accused between 9.30 pm and 10 pm. They handed to him an unsigned copy of a report which had been sent by Dato Mohd Said to YAB Prime Minister. The report was marked as IDD123. The accused said that this report was only located recently by his wife from some boxes. He said that it was found only about a week ago and was not available when Dato Mohd Said gave evidence. The accused also tendered in evidence exhs D76 and D77. They are copies of letters that he had sent to YAB Prime Minister. He explained their contents. The accused said that the report referred to in para 2 of exh D77 is exh IDD123.

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The accused continued to explain the contents of exhs D76 and D77. He then said that on 2 September 1998, he had a meeting with YAB Prime Minister.

The accused was arrested on 20 September 1998. He was assaulted by the police. He gave a statement to the police (exh D72) on 27 September 1998 at 9.45 am. When questioned on this statement, he said:

A The only question asked of me was whether I gave my instructions to the police to close the case relating to the flying letters investigated by the police. My answer was no, I did not. This was the first time since the investigations were conducted in 1997 that I was asked this question. This happens to be the first serious question by the CID after I was assaulted.

B The accused then gave an account of Azizan's attempt to see him in June 1998. This is what he said:

In June 1998, Azizan tried to see me at the Ministry of Finance but I did not agree and he met my officer Mohamed Ahmad and my ADC Zull Aznam. That was at the Ministry of Finance. Mohamed Ahmad is a senior PA at the Treasury. Azizan tried to make an appointment through Mohamed and Zull C Aznam. I refused to see him as it was not necessary for me to see him. I did not want to see him because by then I had lodged a police report (P56) on *Buku 50 Dalil*. So I did not see him. And also because he wanted to discuss some business propositions with me. After that, he contacted Zull Aznam a number of times and also through Abdullah Sani, my driver, seeking an appointment. About a week later, I agreed to see him. I saw him. He came to D the house. He did not discuss business propositions with me because I made it clear to Zull Aznam to convey to him my views that if he has any business proposals he should submit it to the Treasury. So he mentioned *Buku 50 Dalil* and said that at no time was he ever involved in the preparation or distribution of the book. He never made any accusations against me regarding the accident involving his wife. When he talked about his wife, he broke down. I said to him that I did not accuse him of being involved in the conspiracy with regard to E the accident. I did not tell him to deny to the police about any sodomy or any other issue because at the relevant time, the matter as far as I know was closed.

When the accused was asked whether he had given any instructions to SAC Musa on 30 August 1997 not to investigate, he said:

F I did not give any such instructions to Musa Hassan or to anyone else for that matter. I have checked my records and with my staff that SAC II Musa was not there in the office at that meeting on the 30th.

When asked whether he had told SAC Musa not to take statements from Azmin, Shamsidar, Dato Nallakaruppan, Aton and ASP Zull Aznam, the G accused said:

I did not give any instructions to Musa not to take statements from those persons. It would be absurd for me to give such instructions when I myself asked Zull Aznam to lodge a police report on my behalf. How could I then suggest to the police not to question even Zull Aznam.

H In answer to a question as to whether he told SAC Musa not to send the investigation papers to the Attorney General, the accused said:

I did not give such instructions. There was a meeting with Musa at about that time. But I cannot remember the date of that meeting. I had only one meeting with SAC Musa. That was when he recorded my statement.

I The accused was then asked whether he had given instructions to Dato Mohd Said and Dato Amir Junus to get Ummi and Azizan to retract their allegations. In reply, he said:

> I did not give any instructions to PW1 and PW11 to get Ummi and Azizan to retract their allegations. A

In a later part of his evidence, he said:

> I did not give any instructions to PW1 and PW11 to obtain the Kenyataan Umum from Ummi and Azizan.

B

Prior to 25 August 1998, the accused had two meetings with the IGP with regard to this case. The first one was in late June 1998 at the accused's Official Residence. Present with the IGP were Tan Sri Norian, the Deputy IGP, and two other senior police officers. The second meeting was in early August 1998 at the accused's office in the Prime Minister's Department. Present with the IGP were the Deputy IGP and the Director of the CID, C Dato Yaacob. After the meeting, the Deputy IGP and Dato Yaacob left leaving behind the IGP. The accused had a discussion with the IGP.

With regard to his power over the police by virtue of his position, the accused said:

> As the Minister of Finance, I had no authority or jurisdiction or power over D the police, Special Branch and PW1 and PW11. As the Deputy Prime Minister, I had no authority or jurisdiction over the police or the Special Branch. I as Minister of Finance and as Deputy Prime Minister did not use my office or position in relation to the investigation into P14 or P15.

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E

The accused explained the contents of exhs D76 and D77 in some detail. He then referred to the letter 'purportedly' written by Ummi prior to exh P14. That was the letter which was shown to him by YAB Prime Minister and which he asked Azmin to shred. As he said it is:

> ... a different letter from P14 with the same covering letter. The differences F between P14 and that letter are, firstly, that letter had some criticisms of Azmin Ali for his failure to support the family, secondly, the reference to phone conversation and other details were not there. That is all I can remember. That letter was shorter and in more decent language. P14 has a lot of drama. That letter was straightforward.

G

CROSS-EXAMINATION

The accused said that on 8 May 1995, he took an oath to keep secrets as a Minister. When exhs P14A, B and C and P15 were referred to him, he said:

> Dakwaan-dakwaan dalam P14A, B dan C dan P15 adalah sebahagian besar dakwaan dan tohmahan jahat terhadap saya. Saya bersetuju bahawa tujuan H tohmahan dalam P14A, B dan C adalah untuk menjejaskan maruah dan nama baik saya. Kandungannya yang berunsur fitnah dan bertujuan jahat tidak semestinya akan menjejaskan nama baik saya sekiranya maklumat sebenar diketahui.

He said that during his meeting with Dato Mohd Said on 11 August 1997, he was the one who raised the issue of exh P14. At that time, he did not I know about it. He said that it contained allegations which were circulated by people who were paid. When asked whether exh P14 contained

A allegations that he was involved in homosexual activities and had committed adultery with Azmin's wife, he said:

> Saya mengetahui P14 mengandungi tohmahan dan fitnah jahat terhadap saya oleh orang-orang jahat yang menuduh saya melakukan kegiatan homo dan fitnah zina oleh orang-orang yang upah terhadap isteri Mohd Azmin Ali.

B When asked whether the allegations in exh P14A, B and C were widely circulated in August 1997, he said:

> Saya setuju tohmahan dan fitnah dalam P14A, B dan C telah tersebar secara meluas melalui satu conspiracy mulai Ogos 1997.

C When this answer was given, the learned deputy public prosecutor said that the question of conspiracy is irrelevant. I reminded the accused to answer the question as put. He was then asked whether he agreed that the allegations in exh P14 could expose him to humiliation and hatred by many. In answer to that question, he said:

D > Tohmahan dan fitnah di dalam P14 tidak mudah menyebabkan kebencian ramai kerana rakyat juga ingin mengetahui punca dan usaha penyebar fitnah.

When the question was repeated, he said:

> Saya bersyukur kerana meskipun ada tohmahan jahat dan pakatan untuk menghina dan menimbulkan kebencian, ramai rakyat masih menyayangi saya dan tidak terpengaruh dengan pakatan jahat tersebut.

E When asked whether the contents of exh P14A, B and C could damage his reputation as Deputy Prime Minister and Minister of Finance, the accused said that though the purpose of the allegations was to damage his reputation, it did not succeed. When the question was repeated, he said:

F > Saya tidak terjejas semata-mata kerana tohmahan dan fitnah P14.

It was then put to the accused that he would not want the allegations in exhs P14 and P15 to be widely circulated as they could expose him to humiliation and hatred by many. In reply, he said:

G > Tohmahan P14 dan P15 dari awal lagi diketahui fitnah besar dan jahat. Tidak mungkin kalaupun tersebar luas boleh mengakibatkan penghinaan dan kebencian ramai.

When the question was repeated, he said:

> Saya telah jelaskan bahawa fitnah dan tohmahan tidak mungkin menjejaskan nama baik saya.

H He was then asked whether on 12 August 1997 he had instructed Dato Mohd Said and Dato Amir Junus to trace Ummi and Azizan and to obtain information as to why they had made the allegations in exh P14A, B and C. He denied that he gave such instructions and said that he only asked them to investigate into the allegations in depth. It was then put to him that he I asked them to investigate into the allegations in depth as he was concerned about exh P14A, B and C. In reply, he said:

> Saya telah meminta SP1 dan SP11 untuk menyiasat sedalam-dalamnya tentang P14B dan C kerana, pertama, saya sedar dan tahu kandungannya adalah fitnah dan, kedua, Ketua Polis Negara telah memaklumkan mengenai penerimaan P14 dan meminta SP1 dan SP11 meneruskan siasatan sebagai isu keselamatan.

It was then put to the accused that on 13 August 1997 he instructed Dato Mohd Said and Dato Amir Junus to trace Ummi and Azizan as soon as possible to interview them and to 'gempar' them. He denied that he had instructed them. He said that they came to his Official Residence to brief him on the progress of the investigation based on instruction given to them by the IGP. It was suggested to the accused that he asked Dato Mohd Said and Dato Amir Junus to ' ... menggempar dan bukannya menggempar sikit-sikit Ummi dan Azizan'. His answer was this:

> Tidak setuju. Apa yang berlaku ialah SP1 dan SP11 memaklumkan kepada saya kemajuan siasatan dan saya menyatakan dalam perbualan ringan itu supaya mereka (SP1 dan SP11) jangan terlalu keras, terutama konteks ianya berlaku, SP11 dalam laporan bunyi agak marah dan keras terhadap Ummi dan Azizan. Dalam kontek itu, saya sebut janganlah macam itu, gempar sikit-sikit cukuplah.

When the accused was asked whether the instruction he gave to Dato Mohd Said and Dato Amir Junus to trace and put fear in Ummi and Azizan meant that the police were forced to arrest them, he said:

> Saya tidak memberi arahan sama sekali seperti yang didakwa dan soal cara tindakan polis tidak pernah dibincang dengan saya.

With regard to exh P16 it was put to the accused that he lodged the report through ASP Zull Aznam to enable Dato Mohd Said to carry out his instructions and for Ummi and Azizan to be arrested. His reply was this:

> Tidak benar. Saya yang buat laporan polis. Saya tahu tujuannya. Pada peringkat awal, saya keberatan membuat laporan tetapi dinasihat oleh SP1 untuk membolehkannya menyiasat sedalam-dalamnya isu P14 dan P15.

When asked whether on 15 August 1997 he had told Dato Mohd Said and Dato Amir Junus that if the matter is investigated by the CID it should not be brought to court, the accused said:

> Kes tersebut sepertimana yang dimaklumkan oleh Ketua Polis Negara kepada saya melibatkan isu keselamatan. Sebab itu sebelum CID memanjangkan saya harus dimaklumkan kemajuannya. Saya juga akui saya tidak cenderung pada ketika itu untuk membawa perkara itu ke mahkamah kerana Special Branch baru memulakan siasatan.

It was then put to the accused that he was not keen that the CID should investigate into the matter as he did not want the truth to come out. To this, he said:

> Tidak benar. Itu theory yang dipakai oleh musuh-musuh saya. Kalaulah benar saya takut kebenaran dibongkar dengan maksud melindungi atau saya telah membuat apa-apa kesalahan seperti yang ditohmah, saya tidak akan membuat laporan polis dan tidak pula meminta SP1 menyiasat kes ini sedalam-dalamnya.

A It was put to the accused that he did not want the case to be brought to court as he was worried about the publicity that it may bring against him. In response, he said:

> Saya tidak setuju kerana, pertama, saya sendiri yang membuat laporan polis melalui Zull Aznam, kedua, saya bersetuju dengan Peguam Negara bila beliau
B mencadangkan kepada saya untuk mengambil tindakan terhadap orang-orang yang berkenaan. Pada masa itu, Perdana Menteri tidak bersetuju. Jadi tidak benar saya khuatir publicity mengenai kes ini sekiranya dibawa ke mahkamah.

When told that the decision to take the matter to court could only be made by the Public Prosecutor, he said:

C > Saya setuju. Kuasa pendakwaan ada pada Peguam Negara. Sebab itu, saya menjawab soalan, pertama, merujuk kepada laporan polis dan, kedua setelah mendapat pandangan Peguam Negara.

The accused was then asked whether on 16 August 1997 he had told Dato Mohd Said and Dato Amir Junus that if Ummi and Azizan were arrested,
D they were not to be detained for long. In reply, he said:

> Saya ada menyebut kepada SP1 dan SP11, janganlah tahan Ummi dan Azizan lama-lama. Pada masa itu, SP1 dan SP11 kata pada saya, 'Dato Seri baik hati sangat. Orang fitnah macam itu pun masih kasihan lagi'.

When challenged that this was never stated by Dato Mohd Said and Dato
E Amir Junus, the accused said:

> Ada mereka sebut. Pada masa itu, mereka menunjukkan simpati yang amat sangat kepada saya.

In answer to further questions, the accused said that on 18 August 1997 at about 12.30 am, he did not instruct Dato Mohd Said and Dato Amir Junus
F to obtain written statements from Ummi and Azizan to retract and deny the allegations contained in exh P14B and C. He said that the issue of the statements being addressed to YAB Prime Minister did not arise till June 1998. He admitted that he received exhs P17 and P18 possibly on the night of 18 August 1997. When it was put to him that he was the one who asked for these letters, he said:

G

> Saya tidak meminta salinan surat-surat tersebut. Ini sebab biasanya Special Branch memang menyerahkan banyak laporan atau surat yang penting untuk saya ketahui atau yang berkaitan dengan saya.

It was then put to the accused that the contents of exhs P17 and P18 were
H important and beneficial to him. In answer to that, he said:

> Surat-surat ini (P17 dan P18) memberikan penjelasan dan maklumat tentang pendirian kedua-dua mereka. Saya telah minta pihak polis menyiasat sepenuhnya.

The accused was again asked whether the letters were of benefit and
I importance to him. He said:

> I did ask the police to investigate fully into the matter. The letters are the result of the investigation. To me, what is important is the truth. To that extent, the letters are important to me.

To a suggestion by the prosecution that on the night of 18 August 1997, it was he himself who had wished to meet Azizan at the Special Branch office but that it was not agreeable to Dato Amir Junus, the accused said:

> Saya tidak bersetuju. Ini direka oleh SP11. Kalau saya nak jumpa, saya jumpa Azizan dan Ummi, kalau betul.

He denied a suggestion that he then instructed that Azizan be taken to his house.

The accused was then referred to exhs P20, P22 and D76. The questions and answers on these exhibits are as follows:

Question : Adakah setuju bahawa P20 dan P22 membawa faedah kepada Dato Seri?

Answer : Bagi saya soal faedah tidak berbangkit.
(DPP requests for answer. Witness says that that is his answer.)

Question : Bersetuju atau tidak bahawa P20 dan P22 adalah penting kepada Dato Seri?

Answer : Kebenaran penting bagi saya.

Question : Adakah P20 dan P22 penting kepada Dato Seri?

Answer : P20 dan P22 ditulis oleh Azizan.
(DPP says that answer should be Yes or No.)

Answer : Penjelasan Ummi dan Azizan terhadap tohmahan dan fitnah adalah untuk memberikan kenyataan yang benar.
(DPP says that witness is evasive.)

Question : Bersetujukah tidak bahawa P20 dan P22 telah dihantar oleh Dato Seri sendiri kepada Perdana Menteri bersama dengan D76 sebagai lampiran-lampiran?

Answer : Soalan itu sangat mengelirukan kerana D76 dihantar kepada Perdana Menteri satu tahun berikutnya dan saya muatkan dalam lampiran hampir semua surat yang ada di dalam simpanan termasuk P14 yang dikatakan telah juga dikirim kepada Perdana Menteri. Saya tidak tahu sama ada sebahagian atau kesemua lampiran-lampiran tersebut telah dihantar kepada Perdana Menteri sebelumnya.

Question : Setuju atau tidak bahawa P20 dan P22 telah dihantar kepada Perdana Menteri bersama dengan D76?

Question : Dato Seri setuju atau tidak bahawa Dato Seri memuatkan P20 dan P22 ke dalam D76 untuk perhatian Perdana Menteri?

Answer : D76 ditulis kepada Perdana Menteri sebagai lanjutan perbincangan di antara saya dengan Perdana Menteri.
(DPP: Soalan saya tidak dijawab.)

Answer : P20 dan P22, saya jawab setelah bincang dengan Perdana Menteri semua dokumen yang ada dalam rekod saya dilampirkan.
(Tan Sri AG says that the question is simple.)

Answer : Saya ulangi iaitu lampiran-lampiran di D76 termasuk P20 dan P22 dihantar kepada Perdana Menteri sebagai lanjutan perbincangan yang saya adakan dengan Perdana Menteri.

A Question : Adakah Dato Seri setuju bahawa di dalam D76 Dato Seri ada menyebut bahawa Azizan dan Ummi telah menafikan dakwaan-dakwaan mereka seperti terkandung di dalam P14B dan C melalui P20 dan P22?

Answer : Betul. Ada reference di ms 5.

B When the accused was asked whether he had instructed Dato Mohd Said and Dato Amir Junus to obtain exhs P20 and P22 from Ummi and Azizan, he said:

> Saya tidak pernah diberitahu sama sekali tentang apa yang disebut arahan itu.

C He denied a suggestion that he was involved in the preparation of these letters.

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The accused was then questioned on the loss of money from his house. When he was asked whether he had lost two large sums of money from his D house, the accused said that Dato Amir Junus is not telling the truth. When asked whether he had asked the Special Branch to investigate the loss, he said:

> Bila saya menjawat jawatan Timbalan Perdana Menteri, pihak Special Branch berpendapat kawalan keselamatan kawasan rumah haruslah lebih ketat lagi dan tidak terdedah kepada orang ramai yang memasuki rumah dan kawasan E rumah.

The learned deputy public prosecutor responded by saying that the question is simple and repeated it, to which the accused said:

> Betul untuk mengawal keselamatan kawasan rumah dan ini saya sampaikan kepada Zull Aznam. F

When asked whether he had asked the Special Branch to tap his telephone, the accused said:

> Tidak benar, tidak munasabah dan tidak masuk akal untuk saya meminta polis merakam telefon rumah saya. Bahkan, saya diberitahu telefon rumah saya G dirakam beberapa tahun sebelumnya sejak di rumah peribadi saya di Damansara sebelum berpindah ke kediaman rasmi.

The accused was then referred to the meeting he had on 30 August 1997. It was put to him that apart from the Attorney General and Dato Ismail Che Ros, SAC Musa was also present. He said:

H Setelah menyemak buku diari pejabat dan bertanyakan kepada setiausaha Mohd Azmin Ali, kita tidak ada rekod kehadiran Musa Hassan pada tarikh tersebut. Nama-nama Peguam Negara dan Pengarah CID ada dicatat.

To a further question, he said that names of all officers who attend meetings will be recorded if the number is small. When told that what he said was not I the truth, the accused said:

> Saya jelaskan bahawa apa yang saya jawab itu betul mengikut catatan diari dan nota pejabat.

With regard to the meeting on 2 September 1997, the questions and answers go this way:

Question : Saya katakan pada pertemuan Dato Seri dengan SP13 pada 2 September 1997, Dato Seri telah memberi arahan kepada SP13 untuk menutup kes berkaitan dengan siasatan berkenaan dengan P16.

Answer : Saya tidak memberi arahan kepada SP13 untuk menutup kes.

Question : Saya katakan kepada Dato Seri bahawa Dato Seri telah mengarahkan SP13 untuk tidak menghantar kertas siastan berkenaan P16 kepada Peguam Negara pada pertemuan 2 September 1997 itu.

Answer : Ini tidak benar. Direka kemudian sebagai bukti conspiracy polis.

Question : Saya katakan di dalam pertemuan itu juga, Dato Seri telah serahkan P20, P21 dan P22 kepada SP13.

Answer : Tidak benar saya serahkan kepada SP13.

The accused was questioned on matters relating to *Buku 50 Dalil* and briefings that the Special Branch gives YAB Prime Minister. He was then queried on exhs D76 and D77 and the significance of the oath that he took as a Minister.

RE-EXAMINATION

The re-examination started with the significance of the oath that the accused had taken and the confidentiality of exhs D76 and D77.

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The accused was asked to explain what he meant when he said in cross-examination that, 'semasa pertemuan saya dengan SP1 pada 11 Ogos 1997, bukan saya mula bangkitkan isu P14'. He said that what he:

> ... meant was, firstly, the meeting on 11 August 1997 with SP1 and SP11 was after I received a call from the IGP informing me about P14 and requesting SP1 and SP11 to see me in order to brief me. Secondly, because the visit of SP1 and SP11 was pre-arranged, they immediately intimated to me about P14 on IGP's instructions.

Learned counsel reminded the accused that he was referring to the meeting on the morning of 11 August 1997 and that the question is confined to the meeting with Dato Mohd Said only. The accused then said:

> What I said just now refers to the meeting at night on 11 August 1997. On the morning of 11 August 1997, I met SP1 alone after the other officers left. SP11 was not there at that time. The briefing given to me by SP1 and the team in the morning of 11 August 1997 was based on the decision of the National Security Council. That was an official meeting. P14 was not brought up at that meeting. SP1 stayed back after the official meeting for a private chat. But I did not bring up the issue of P14 because at that time I was unaware of it. P14 was intimated to me only later by the IGP who received the letter from Dato Megat Junid. The IGP intimated about P14 to me on the night of 11 August 1997. That was when he suggested that SP1 and SP11 meet me in order to give a

briefing (saksi dirujuk kepada P14A, B dan C). I was made aware of P14 by the IGP on the night of the 11th. A copy of P14 was later shown to me by SP1 and SP11.

When asked to explain why he said in cross-examination that: 'Tohmahan dan fitnah di P14 tidak mudah menyebabkan kebencian ramai kerana rakyat juga ingin mengetahui punca dan usaha penyebab fitnah', the accused said:

> We cannot underestimate the intelligence of the public. They would certainly wish to know whether the scurrilous and malicious allegations were perpetrated by responsible individuals or backed by a group of conspirators.

When asked whether from his knowledge, his good name and reputation were affected in 1997 as a result of exh P14A, B and C, the accused said:

> I thank God Almighty that these vile attempts to slander my reputation was rejected by the public excepting for the few enemies of mine in politics. Wild allegations are common occurrences amongst politicians and public figures.

As to whether IDD23 and IDD24 had any effect on the allegations contained in exh P14A, B and C in relation to exposing him to public contempt and hatred, the accused said:

> The statements made by the Prime Minister and the IGP did not help in allying public contempt because I did not believe, in the first place, that the public took a serious note or view of such vile accusations.

When asked what he meant when he said in cross-examination that 'Tohmahan P14 bertujuan menjejaskan nama baik saya tetapi telah tidak berhasil', he said:

> The intention of the conspirators was clear, that is, to undermine me politically but they failed because the identities of the conspirators were known and the allegations were baseless and absurd.

He also said that it is most preposterous to suggest that any absurd or vile accusation would adversely affect the integrity of a person.

The accused said that Dato Mohd Said and Dato Amir Junus informed him that they were looking for Ummi and Azizan so that they would be able to find out why exh P14 was written and who the others were behind it. He was asked to explain the use of the word 'instruction' by him in his examination-in-chief and 'meminta' in cross-examination when he said: 'Apa yang berlaku ialah saya telah meminta SP1 dan SP11 menyiasat sedalam-dalamnya dakwaan P14B dan C'. He explained it in this way:

> I used consistently the word 'instruct' to instruct officers as Deputy Prime Minister and Minister of Finance to do what is right and proper according to the law. Dozens of statements and speeches were to that effect. Again the word 'instructions' is applicable to all officers.

When asked to explain the information given to him by the IGP about exh P14A, B and C, he said:

> The instruction from the IGP was clear. He informed me that P14 was a security matter because it was clearly an attempt to undermine the leadership and to cause political instability. So when SP1 and SP11 came to see me at my

> residence, I suggested that they investigate thoroughly P14. At that time, I did not decide which branch of the police would conduct investigations. SP1 and SP11 were asked by the IGP to come and brief me. The IGP merely said that P14 involved me and as Deputy Prime Minister and Minister of Finance and he would construe it as a security matter.

He said that in his meeting with Dato Mohd Said and Dato Amir Junus on 13 August 1997, he merely suggested as a follow-up to their briefing to investigate exh P14 thoroughly.

When asked what his purpose was in lodging exh P16 through ASP Zull Aznam, he said:

> I decided to lodge P16 to allow the police to investigate P14 and P15 thoroughly. In fact, it is clear from the last sentence of P16. SP1 suggested that I make P16 in order to facilitate investigation.

He was then asked this question:

> Why is it that at that time you were not inclined to have this matter brought to court?

And he answered it this way:

> I want to clarify that there are two issues involved. Firstly, the suggestion that I lodge a police report which initially I was not inclined to make for reasons I have explained as we receive hundreds of flying letters. As a practice, we in the government then do not make reports on such matters. Secondly, whether this issue should be taken to court at a late stage. I was not inclined to decide on the matter then because the police was in the midst of investigating. The issue of whether to proceed or not was later on discussed by me with the Attorney General.

He was then asked whether in his discussion with the Attorney General, he was keen that the culprits be brought to justice. He said:

> The Attorney General was keen to charge the culprits. I concurred with him. But I did caution him on the need to take note of the Prime Minister's position to consider the matter closed.

He said that based on the advice of the Attorney General, he was keen to have the culprits charged so that the matter could be put to rest once and for all. He said that the Attorney General did not consider any criminal action against him.

After he lodged exh P16, SAC Musa took his statement on 19 August 1997. When asked whether he would have lodged exh P16 if he was not keen on police investigation, he said:

> I would not have lodged a police report and I would not have requested the police to investigate the case thoroughly if I did not want the investigation.

He was then asked whether he had any suspicion that exhs P17 and P18 were not voluntarily and properly obtained. He said in reply:

> There was never a suspicion that P17 and P18 were involuntary.

With regard to the accused's evidence that Dato Mohd Said and Dato Amir Junus had told him that he is a good hearted person, the questions and answers run as follows:

> Question : Why was the part of the evidence of SP1 and SP11 saying that you are good hearted and still pitying people who surrender, not brought up when SP1 and SP11 gave evidence?
> (DPP says this question is perplexing.)
>
> Answer : The question is straightforward. I did not bring it up earlier because I thought that it would only be relevant to clarify matters if and when asked. There were many meetings. Many of the reports would be irrelevant. Many things were told to me but I had difficulty in informing court unless asked. This was said by SP1 and SP11, particularly so by SP11.
>
> Question : Did you inform your counsel about this?
>
> Answer : I informed my counsel about this after the evidence of SP1 and SP11.

With regard to the directions that he was alleged to have given SAC Musa on 30 August 1997, the accused said:

> Either in the presence of the Attorney General or not, I would not have given the directions that I am alleged to have given SAC Musa on 30 August. The Attorney General would have cautioned me if I had done so.

As to what transpired at the meeting on 2 September 1997, the accused said:

> With regard to the meeting on 2 September 1997 I cannot recall what transpired at the meeting except for the fact that Musa informed me of certain developments or progress of his investigation. But I did not give any instructions to him not to proceed as alleged by him. At that meeting, I reminded Musa of the Prime Minister's instructions as reported in the papers.

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The accused said that there was no loss of RM4m from his house as stated by Dato Amir Junus. He did not on any occasion mention or complain about the so-called loss of so much money. He mentioned to ASP Zull Aznam about the security of his Official Residence and the possibility of documents being searched or petty cash for marketing amounting to about RM2,000 getting lost. This amount was made known to him by his wife. He spoke about it to ASP Zull Aznam who took it up with the higher authorities. He came to know about the loss of the RM4m only when Dato Amir Junus gave evidence. He added:

> That was why I maintain that this figure is a recent fabrication as part of the attempt by the police and the Attorney General's Chambers to vilify me.

As to whether he obtained any benefit from exhs P17 and P18, he said:

> With regard to P17 and P18, I derived no advantage or benefit whatsoever. It is just like one being accused for being a murderer and then there is a withdrawal of the allegation the following day. My contention has consistently been that the allegations were malicious and scurrilous and must be rejected.

He said that the idea of getting the retraction letters from Ummi and Azizan must be either from Dato Mohd Said and Dato Amir Junus or the police and not his. He then said:

> They just informed me and showed me the letters.

When the accused proceeded to say that at that point he had agreed with the advice of the Attorney General that Ummi and Azizan should be prosecuted, learned counsel reminded him that that was at a later stage. The accused agreed that what the Attorney General told him was at a later stage.

The accused called a total of 22 other witnesses to testify on his behalf. They are ASP Zull Aznam bin Haji Haron (DW2), Mohamed bin Ahmad (DW3), Sivabalan s/o Ethirmanasingham (DW4), Ashrof Abdullah (DW5), Abdullah Sani bin Said (DW6), Sa'odah bte Alias (DW7), Ngui Kee Heong (DW8), Ma'Amin bin Latip (DW9), Manjeet Singh Dhillon (DW10), Zamani bin Sulaiman (DW11), Dr Vasantha Nair (DW12), Rusdi bin Mustapha (DW13), Mohd Azmin bin Ali (DW14), Sukdev Singh s/o Surjit Singh (DW15), Nor Azman bin Abdullah @ Beginda anak Minda (DW16), Siti Mariam bte Mat Zain (DW17), Ahmad Aznam bin Abdullah Rahman (DW18), Mohd Faiz bin Abdullah (DW19), Kathirasan s/o SN Abidaiappan (DW20), Datin Seri Wan Azizah bte Wan Ismail (DW21) and Ong Cheng Keat (DW22). Mohd Kamil bin Othman (CW1) was called and examined by the court on behalf of the defence. I shall refer to their evidence, where relevant, at a later stage when I consider whether the prosecution has proved its case beyond reasonable doubt on all the evidence adduced.

I shall now explain why I excluded certain categories of evidence. They are as follows:

(i) Evidence relating to political conspiracy

(ii) Evidence relating to credit

(iii) Evidence relating to the taped conversation

(iv) Hearsay evidence

(v) Evidence relating to other instances of alleged fabrication of evidence

(vi) Evidence relating to legal professional privilege

(I) EVIDENCE RELATING TO POLITICAL CONSPIRACY

Political conspiracy is a slogan that has been indiscriminately used by the defence from the very beginning of the trial. The battle cry of this slogan is that certain prominent politicians had conspired to topple the accused and, in order to achieve that objective, had enlisted the assistance of Ummi to make the allegations in return for benefits. As I have explained in an earlier part of the judgment, the truth or falsity of the allegations is not a fact in issue. What the prosecution needs to prove is only the fact of making the allegations. That is all that is required of the prosecution as far as the allegations are concerned. Thus evidence of causative facts, motive and introductory or explanatory facts relating to the making of the allegations

A are irrelevant pursuant to ss 7, 8 and 9 of the Evidence Act 1950 respectively. This means that even if there were forces, be it political, corporate or otherwise, behind Ummi in making the allegations, evidence of such facts would be irrelevant to the fact in issue. This, to my mind, ought to have become apparent to even the most uninitiated when I made the ruling on the irrelevancy of the truth or falsity of the allegations at the end B of the case for the prosecution. What then is left for the defence to raise, apart from a denial that the allegations were made, is that the evidence of the prosecution witnesses relating to the directions given by the accused is a fabrication. That is a line of defence that was open to the defence from the very beginning of the prosecution case. Such a defence, properly advocated, C would be a perfect web for a conspiracy by whatever description it may be clothed or coloured. If that line of assault is not launched and pursued by legally acceptable means, the shout of political conspiracy will have no legal basis whatsoever and will continue to remain as a smokescreen to hide away from the real issues.

D The defence made an attempt to go back to the issue of political conspiracy through a different route, correctly, in my opinion, in the course of its case. This happened when the accused, while giving evidence, made references to political figures who were against him, and said:

> After 3 September 1997, there was a change in the political and economic conditions beginning with financial convulsions engulfing the region and E different policies advocated in dealing with the financial and economic crisis. We in Malaysia began to feel the impact towards the end of 1997. There was a major difference in policies between me as Minister of Finance and the Prime Minister. I do believe this was generally known to the public.

The introduction of this evidence led me to interject and ask learned counsel to explain the relevance of this line of questioning. In reply to my F question Raja Aziz Addruse, leading counsel for the defence, said this:

> This is to establish conspiracy to show change of attitude of the authorities towards the accused. It was one of the reasons of the conspiracy to get rid of him. The conspiracy issue is very important in this case because the credibility of the police comes into question. Why I say that the issue of conspiracy and G credibility of the police are important is because of the evident change in the attitude of PW1 and PW11 as well as PW13 when we compare the time at September 1997 and later on. One can see a major change. Nobody has explained the change.

I then asked learned counsel whether this theory of conspiracy is aimed at showing that the allegations are false. In reply, he said: H

> No. To show the credibility of witnesses.

I then asked him whether it meant that he was attempting to show that the relevant police officers had given false evidence to which he gave an answer in the affirmative. When asked to explain how he would establish this, he I said:

> Because in 1997 all the contemporary documents including D25 had stated in no uncertain terms that there were people behind the allegations.

I then asked learned counsel whether the issue of conspiracy involving police officers was put to the police witnesses when they gave evidence. In reply, he said:

> PW1 was asked if a person higher than the Deputy Prime Minister were to tell him to lie, would he lie? If there was conspiracy then that would explain the change in attitude of the police towards accused. That would also explain why what was in order in 1997 September became in 1998 not in order all of a sudden. That goes to credibility. In any event, it is not proper for the court to shut out the defence of conspiracy. Court may rule it out later.

In reply to the argument advanced, the Honourable Attorney General said:

> With respect to my learned friend, the question of conspiracy must be relevant to the charges. It must be a conspiracy, to be relevant, involving the police. In 1997, there was this investigation, if it can be called one, by the Special Branch. There was a turning over process. The investigation was not complete. We did not know what had happened. Based on those documents, the investigation was aborted. At that time, the investigation officer was not aware of the turning over operation. In 1998, there was no sabotage. Arising out of the report on *50 Dalil*, there was a full investigation. It was in the course of this investigation that the investigation officer discovered the turning over operation. If at all there was a conspiracy, does it involve the police? Political conspiracy has nothing to do with the charges. The matter of conspiracy, if any, by the police was not put to the police officers. Thus, the question of change of attitude of police officers being linked to conspiracy is not relevant.

On the need for the defence to put its case to the prosecution witnesses, senior deputy public prosecutor, Dato Abdul Gani Patail, read a passage form *Chua Beow Huat v PP* [1970] 2 MLJ 29. Raja Aziz Addruse, in reply then said:

> Their argument was perfectly all right at the end of their case. That was accepted by the court. That argument was because investigations were sabotaged by Special Branch because of alleged directives allegedly given by accused. *Buku 50 Dalil* was published in 1998. There was a fresh investigation. SAC Musa discovered that there was turning over. That was their story. Now we have to put our side of the story. We have to explain the reason for this change.

I then posed this question to learned counsel:

> In the absence of conspiracy involving police officers having been put to prosecution witnesses, can you explain to me in what way was there a conspiracy involving police officers to change their stand?

Learned counsel requested for the case to be stood down to enable him to check up the matter and when court resumed said:

> We have IDD76 and IDD77. They are letters written by the accused to the Prime Minister dated 25 August 1998 and 28 August 1998. In IDD76, it is first line of p 3 and para (i) p 4 1st para 1, p 1 of para 1 beginning with word 'Mereka ... ' IDD77 para 2. Evidence of PW13 on these exhibits given on 16 December 1998.

A The argument advanced shows that there has been a shift from political conspiracy to police conspiracy. This would be a valid defence. Evidence to show that the police had conspired to change the stand of the prosecution witnesses or to fabricate evidence against the accused would be clearly relevant. That would form a sound foundation for a conspiracy, by whatever name the defence feels comfortable to describe it. The concept of a political B conspiracy without this basis is therefore meaningless. It is this that ought to have attracted the attention of the defence from the very beginning. As the prosecution pointed out, with reference to *Chua Beow Huat v PP* [1970] 2 MLJ 29, the defence ought to have put this line of defence to witnesses for the prosecution when they were cross-examined. That, of course, does not C mean that the defence cannot raise this issue now and, in addition, it can always be put to the witnesses by having them recalled. However, even if the latter course is not followed, the court is still bound to consider any evidence adduced at the defence stage in respect of that issue. Thus, I made the following order:

> D Evidence may be adduced, if any, to show that there was a conspiracy by the police to change their stand or conspiracy to create evidence against the accused *and no further*. In this regard evidence of political conspiracy against the accused, if any, is irrelevant.

Be that as it may, it is superfluous to state that any such evidence adduced must, in the first place, be admissible under the relevant provisions of the E Evidence Act 1950. Thus, for the avoidance of any doubt, I made this clear to the defence on 12 February 1999 in the following words:

> I would like to advise the defence that the introduction of collateral facts, if any, to establish the theory of police conspiracy must be shown to be relevant in accordance with the provisions of the Evidence Act 1950. To that extent I would F appreciate submission from both parties before such evidence, if any, is sought to be tendered in accordance with s 136 of the Evidence Act 1950.

(II) EVIDENCE RELATING TO CREDIT

The defence had attempted during the prosecution case to adduce evidence G to discredit Ummi by showing that certain answers she gave under cross-examination are not true, in particular, when she said:

> Saya tidak pernah didisowned by my parents. Saya tidak bersetuju bahawa saya telah dibuang oleh bapa saya. Saya tidak bersetuju bahawa saya menjual kereta Mercedes bapa saya tanpa kebenarannya untuk membayar hutang saya. Saya tidak bersetuju bahawa saya mempunyai banyak hutang.

H

And when referred to a statutory declaration affirmed by her father stating that he had disowned her, she had said:

> Ini dilakukan tanpa pengetahuan saya tetapi saya berani mengatakan Azmin telah berasuahkan bapa saya untuk melakukan perkara ini. ... Saya tidak I menyalahkan bapa saya dalam hal ini kerana saya percaya ada dalang di sebaliknya iaitu Azmin di mana dia telah menghadiahkan bapa saya sebuah rumah bungalow yang bernilai, kalau ta' silap saya, RM300,000 dan sebuah kereta Perdana yang dibeli secara tunai selepas kes *50 Dalil* meletup.

When Azmin was giving evidence during the defence case, he was referred to the part of the evidence of Ummi where she had said that he had bribed his father to take his side. Azmin said that Ummi is a compulsive liar. When he was asked to substantiate the statement, the prosecution contended that this line of questioning should not be allowed based on s 153 of the Evidence Act 1950. The defence argued that it is relevant in relation to the credibility of Ummi. Having initially allowed the flow of questioning, I invited parties to submit further on the law relating to this issue.

The prosecution started its submission by saying that questions asked of a witness must be relevant. The questions put in this instance are collateral in nature and the answers given cannot be contradicted as they relate only to the credit of Ummi and must be accepted as final though the answers given need not be accepted as the truth. The defence argued that if evidence cannot be led to contradict the evidence of Ummi, the court may hold that the relevant part of Ummi's evidence sought to be challenged has been accepted. It was contended that Azmin must be allowed to give evidence on the issues concerned to enable the court to assess the credibility of Ummi and to show that she is biased.

The answer to the argument advanced lies in s 153 of the Evidence Act 1950 which reads as follows:

> When a witness has been asked and has answered any question which is relevant to the inquiry only so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely he may afterwards be charged with giving false evidence.
>
> Exception 1 — If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.
>
> Exception 2 — If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

It must first be observed that when a witness has been asked in cross-examination a question which is directly relevant to the matter in issue, and he gives a denial or a certain reply, he may of course be contradicted by independent evidence on all matters directly, relevant to the issue. But where the question relates to a fact which is collateral to the issue, that is to say, where it is asked merely for discrediting a witness and the witness gives an answer, he cannot be contradicted. The reason for the rule is obvious. The primary object of a trial is to confine itself to the points in issue. Questions asked with the sole object of shaking the credit of a witness bring in their train many matters irrelevant or foreign to the inquiry, and if the parties are allowed to adduce evidence to contradict them, it is bound to draw away the mind from the points in issue and to protract the investigation to an embarrassing and dangerous length. There will be no end of proving collateral issues, and the real points in dispute will be lost sight of (see *Sarkar on Evidence* (14 Ed) pp 2070–2071). This is a sound general rule, based on the desirability of avoiding multiplicity of issues to the effect that the answers given by a witness to questions put to him in cross-

examination concerning collateral facts must be treated as final. They may or may not be accepted by the court, but the cross-examiner must take them for better or worse and cannot contradict them by other evidence (see *R v Livingstone* [1987] 1 Qd R 38). The test for determining whether a matter is collateral or not, according to Pollock CB in *Attorney General v Hitchcock* (1847) 1 Exch 91, is this:

> If the answer of a witness is a matter which you would be allowed on your own part to prove in evidence—if it have such a connection with the issues that you would be allowed to give it in evidence—then it is a matter on which you may contradict him.

In *Harris v Tippett* (1811) 2 Comp 637, the defendant witness was asked in cross-examination whether he had attempted to dissuade one of the plaintiff's witnesses from attending the trial. Upon his denying it, Lawrence J held that a witness to the contrary could not be called on the footing that, the questions not being relevant to the issue, other witnesses cannot be called to contradict the answers given. In *Piddington v Bennett and Wood Pty Ltd* (1940) 63 CLR 533, a witness in a running down action, asked in cross-examination to account for his presence at the scene of the accident said he had been to the bank on behalf of a named person. It was held on appeal that the trial judge had wrongly allowed the bank manager to give evidence to the effect that no business was done on behalf of the person named by the witness on the day of the accident. Conversely in *R v Busby* (1981) 75 Cr App Rep 79, a prosecution for burglary and handling, police officers were cross-examined to the effect that they had fabricated statements attributed to the accused and indicative of his guilt, and had threatened W, a potential defence witness, to stop him giving evidence. These allegations were denied. The trial judge ruled that the defence could not call W to give evidence that he had been threatened by the officers, because this would go solely to their credit. Allowing the appeal against conviction, the Court of Appeal held that the trial judge had erred and that the evidence was relevant to an issue which had to be tried, because, if true, it would have supported the defence case that the statements attributed to the accused had been fabricated. In *R v Phillips* (1936) 26 Cr App Rep 17, the Court of Criminal Appeal held that the accused should have been allowed to call evidence to rebut his daughters' denial that they had been schooled by their mother to give evidence against him. I pause to add that in both these cases, the evidence in rebuttal related to matters that had been specifically raised and attributed to the witnesses concerned. Thus, the rebuttal evidence sought to be introduced was directly in issue to the charges and was not a matter of credit.

As I have repeatedly stressed, the truth or falsity of the allegations made by Ummi is not relevant. What is relevant is the fact that she had made the allegations. Thus the motives, interest or conduct of Ummi in making the allegations are irrelevant. Accordingly, the facts whether she has been disowned by her father or not; whether she has sold her father's Mercedes Benz motor car or not; whether she is heavily indebted or not; or whether her brother Azmin has bribed her father in order to disown her,

are not relevant to the issues before the court and the answers she gave in reply to the questions in issue must be taken as final and cannot be contradicted. They are matters which the defence itself would not be permitted to adduce in evidence in support of its case as they have no connection with the facts in issue and are therefore irrelevant. If it were otherwise the court will be embarking on the unnecessary task of resolving the family dispute between Ummi and Azmin. I therefore reversed my earlier ruling and ruled that the answers given by Ummi cannot be contradicted.

(III) EVIDENCE RELATING TO THE TAPED CONVERSATION

On 16 June 1998, Nor Azman bin Abdullah @ Beginda anak Minda, a defence witness, went to London with his employer Dato Sng Chee Hua, Ummi and one George. In the early part of the testimony of this witness, the defence sought to adduce in evidence parts of a conversation between him and Ummi regarding *Buku 50 Dalil*. Upon objection having been taken by the prosecution, learned counsel said that the evidence sought to be adduced is not about political conspiracy but as to what happened in London, particularly, with regard to exh P14A, B and C. I overruled the objection of the prosecution and ordered that the questioning of the witness be directed to the matters stated by learned counsel. Nor Azman then proceeded to say that he taped a conversation between Ummi and Dato Sng Chee Hua over a period of four days. He recorded the conversation in a total of seven tapes. Initially he said that as certain parts of the recording were not clear, he cut off those parts. With the editing he did, the seven tapes were reduced to four tapes. His examination then proceeded this way:

Question : Adakah kamu memotong apa-apa perbualan yang terang?

Answer : Ya, saya ada memotong perbualan yang sangat terang dan jelas. Sebab saya memotongnya selepas Timbalan Perdana Menteri Dato Seri Anwar Ibrahim mendengar tape tersebut. Dato Seri kata dia tidak mahu implicate nama Perdana Menteri di dalam tape tersebut. Dato Seri Anwar berkata Perdana Menteri baik dengannya. Cuma pihak tertentu cuba memasukkan nama Perdana Menteri. ...

Question : Adakah bahagian yang terang selain daripada bahagian yang kamu sebut tadi juga dipotong dari 7 rakaman itu?

Answer : Ada, yang saya menyebut Perdana Menteri sudah berkarat. Mungkin ada yang lain yang kasar saya potong yang saya ta' ingat. ...

Question : Bolehkah kamu ingat sekarang apakah bahagian lain yang kamu potong?

Answer : Ya, ada.

Question : Yang lain seperti Ummi menyebut nama-nama orang yang menaja buku tersebut.

Question : Daripada dua pita adakah kamu jadikan kepada satu pita?

Answer : Ada.

A He said that he had burnt the original seven tapes. He had given the four tapes to a lawyer called Yeoh for safekeeping before they were handed to the police. The defence then applied for the four tapes to be played in order to prove that the conversation did take place in London between Ummi and Dato Sng Chee Hua as testified by Nor Azman. The prosecution objected to the application on the ground that the conversation does not relate to a B fact in issue. I then asked learned counsel whether the conversation in the tapes have anything to do with exh P14A, B and C. He said:

> It has something to do with P14A, B, C because the only role of Ummi in relation to *Buku 50 Dalil* is with regard to P14A, B, C. The direct bearing between the tapes and P14A, B , C is that the only role of Ummi in relation C to the book is P14A, B, C which she alleges she wrote. There is nothing in the tapes to show that she did not write P14A, B, C.

In making a ruling, I took two factors into consideration. Firstly, on the statement by learned counsel himself the tapes have nothing to do with the fact of the making of the allegations by Ummi. The material parts of the D conversation had already been put to Ummi in the course of the case for the prosecution when she was cross-examined. They relate to *Buku 50 Dalil*, Ummi's hatred of the accused and some mention of money. She denied them and said that she cannot remember some parts of the conversation. These matters are not relevant to the facts in issue in this case with regard to the making of the allegations by her. Her answers of denial cannot E therefore be contradicted pursuant to s 153 of the Evidence Act 1950 which I have discussed earlier. Secondly, Nor Azman's evidence indicated that the tapes have been tampered with on the instructios of the accused. The conversation in the four tapes sought to be admitted is therefore not an accurate account of what actually transpired between the parties. In addition, the fact that the original seven tapes were burnt and not retained F is in itself a suspicious circumstance and casts serious doubts on the authenticity of the edited four tapes. As I said in *Mohd Ali Jaafar v PP* [1998] 4 MLJ 210, if there is no evidence to show that a taped conversation is an accurate account of a conversation that occurred, then it is not admissible. Accordingly, I disallowed the application to play the tapes with G a view to them being admitted in evidence.

(IV) HEARSAY EVIDENCE

Nor Azman while giving evidence, said that Ummi showed him *Buku 50 Dalil* at the Subang Airport, Kuala Lumpur when they were on their way to H London. After he was examined on several matters relating to the book, he was asked:

> Adakah Ummi memberitahu kamu dari manakah beliau dapat buku itu?

The prosecution objected to this question being asked on the ground that the answer given will be hearsay. The defence argued that what is attempted I to be adduced is whether Nor Azman heard from Ummi where she got the book from. It was contended that it would fall within the scope of s 60(1)(b) and (c) of the Evidence Act 1950 as direct evidence. It was further argued

that the answer is admissible to show that the statement was made (in answer to the question) and not in proof of its truth. When I asked learned counsel the purpose which is sought to be established by proving the fact of the statement having been made, he said:

> *PP v Subramaniam* did not confine itself to the receipt of such evidence only to show the mental state of the witness. In this case, it is admissible merely to show that the statement was made. This is a case where Ummi was called. She was a witness in this case. It will only be hearsay if this witness testifies about what Ummi told him of what someone else told her, ie double hearsay.

The law relating to hearsay evidence is well settled. As Mr LMD de Silva said in *Subramaniam v PP* [1956] MLJ 220 at p 222:

> ... Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.

The last part of the passage was referred to by the Federal Court in *Leong Hong Khie v PP* [1986] 2 MLJ 206 where Seah FJ in writing for the court said (at p 209):

> ... In our opinion, the general proposition laid down by the Privy Council in that case must be read subject to this condition, viz, that the statement must be directly relevant in considering the state of mind of the witness to whom it had been made. In other words, the proposition could only apply when the mental state of the witness evidenced by the statement was itself directly in issue at the trial.

The reference to a statement made to a witness by a person who is not himself called as a witness means that the rule applies to what can be described as firsthand hearsay. To that extent, learned counsel's submission that the rule applies only to double hearsay cannot be sustained. When learned counsel said that the statement is sought to be admitted to show that it was made and not to establish its truth, I asked him the purpose for such admission. He said that it is admissible merely to show that it was made. In my opinion, the fact that a statement was made does not on its own make it admissible. It must be shown to be relevant to a fact in issue as the fact that a statement has been made may be admissible for many purposes. It becomes relevant only when it is desired, for instance, to show the state of mind of the person to whom it is made and that the mental state of the witness evidenced by the statement is itself directly in issue at the trial. It is to ascertain this purpose that I asked learned counsel the reason for which he wanted the answer of Nor Azman to be admitted. If the purpose is not shown, the court would be in no position to rule on the relevancy of the statement with regard to the facts in issue, and, if it is not relevant at all, the statement would amount to hearsay and thereby become inadmissible.

A This is made clear by a passage from the book entitled *Hearsay: A Practical Guide Through the Thicket* by Irving Younger at p 12 as follows:

> Back to our witness: 'On October 15. I spoke with my brother. He was in London. We spoke by phone. He said to me, "It's raining here in London." '
> 'Objection! Hearsay!'
>
> B If the judge is alert, he will say, 'Counselor, what are you trying to prove?'
>
> Suppose that the proponent says, 'Your Honor, I am trying to prove that the transatlantic telephone was in good working order on that day.'
>
> It is not hearsay. The statement is not offered to prove the truth of what it asserts.
>
> C 'Your Honor, I am trying to prove that his brother was alive on that day.'
>
> Not hearsay.
>
> We could continue with many hypothetical relevances, each of which leads to the conclusion that the out-of-court statement is not hearsay. But consider one particular relevance. Witness on the stand: 'I spoke with my brother. My brother said to me, "It's raining here in London." '
>
> D 'Objection!'
>
> 'Counselor, what are you trying to prove?'
>
> 'Your Honor, I am trying to prove that it was raining in London.'
>
> *Now it is hearsay.* Only now is the out-of-court statement being offered to prove the truth of what it asserts: that it was raining in London. This is the only
> E relevance that can make the statement hearsay.
>
> 'Objection sustained. Call your next witness.'

I made this inquiry in accordance with s 136(1) of the Evidence Act 1950, which I shall discuss in some detail shortly, in order to rule on the relevancy of the proposed evidence. As learned counsel failed to advance any cogent
F reason to show the relevance of the proposed answer, I allowed the objection raised by the prosecution.

(V) EVIDENCE RELATING TO OTHER INSTANCES OF ALLEGED FABRICATION OF EVIDENCE

G The defence proposed to adduce evidence of requests to persons to fabricate evidence against the accused and extraction of confessions from persons saying that they had been sodomized by the accused by the police in support of the defence of police conspiracy. As I had some doubts as to the evidential value of the evidence sought to be adduced, I asked both
H parties to submit on the relevancy of such evidence before the witnesses are called. The first matter that requires consideration is the power of the court to require a party to disclose the relevancy of the evidence of a proposed witness before the witness gives evidence. This brings into focus s 136(1) of the Evidence Act 1950 which reads as follows:

I
> When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

Questions of admissibility of evidence are questions of law and are determinable by the judge. If it is the duty of the judge to admit all relevant evidence, it is no less his duty to exclude all irrelevant evidence. Section 5 of the Evidence Act 1950 declares that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as declared to be relevant and of no others. It follows from this that a party to a suit or proceeding is entitled to give evidence of only facts which are declared relevant under the provisions of the Evidence Act 1950. The judge is empowered to allow only such evidence to be given as is, in his opinion, relevant and admissible and in order to ascertain the relevancy of the evidence which a party proposes to give, the judge may ask the party proposing to give evidence, in what manner the alleged fact, if proved, would be relevant, and he may then decide as to its admissibility (see *Sarkar on Evidence* (15th Ed) pp 2152–2153). As the *Law of Evidence* by Monir (10th Ed) Vol II says at p 1399:

> This section, therefore, gives to the court the power to ask a party tendering evidence of a particular fact to show how the fact if proved would be relevant, and the evidence can be admitted only if the court is satisfied that it is relevant.

It is therefore manifestly patent that the court has been endowed with the power to exclude evidence which it considers to be irrelevant. A matter of critical importance is whether this power can be exercised by the court before a proposed witness begins to give evidence. In my opinion, the language employed in the subsection clearly contemplates the exercise of the power at that stage as it empowers the court to inquire from a party '... in what manner the alleged fact, if proved, would be relevant ...' when a party '... proposes to give evidence of any fact ...' and to admit the evidence only if it finds it to be relevant. The word 'proposes' means the court can exercise the power given by the subsection when a party wishes to call a witness, that is to say, before a proposed witness begins to give evidence. As *Field's Law of Evidence* (10th Ed) Vol VI says in its commentary on the Indian equivalent section at p 5624:

> The practice of admitting evidence and reserving the question of its admissibility for further consideration is unwise and much to be regretted. If the evidence is once admitted, it is impossible to say what its effect may be on the mind of the person who hears it. It is most desirable that the question of admissibility should be finally decided when the objection to questions is taken: Per Petheram CJ in *Jadu Rai v Bhubotaran Nundy* ILR 17 Cal 173 at p 186; see also *Emperor v Panchkeri Dutt* 1 LR 52 Cal 67, AIR 1925 Cal 587; *Seikh Abdul v Emperor* AIR 1925 Cal 887 at p 888.

It has been held that the court may conduct this exercise even when a party applies to summon a person as a witness. In saying this, I draw support from the *Law of Evidence* by Woodroffe and Amir Ali (16th Ed) Vol IV which says at p 3569:

> Where a party applies for summoning a person as his witness to give evidence in the case, a duty is cast by s 136 of the Evidence Act on the court to inquire from the party summoning the witness in what manner the evidence of the witness would be relevant for the purpose of the case. The court should issue

summons only if it thinks fit that the evidence would be relevant for the decision and not in mechanical manner (*Sankaran v Dr Ambulakshan Nair* (1989) 2 KLT 570).

In my opinion, therefore, a party does not have an automatic right to call a person as a witness. The court has the power, and, indeed is duty-bound, to inquire into the relevancy of a proposed witness before he begins to give evidence. The object is to ensure that evidence is confined to relevant facts and does not stray beyond the proper limits of the issues at trial. In order to ask a party '... in what manner the alleged fact, if proved, would be relevant ...' as provided by the subsection, it is necessary for the party to give a summary of the proposed evidence when asked by the court. It is only with such a summary can the court be in a position to rule on the relevancy of the proposed evidence. The court will then have to decide on its relevancy on the assumption that the proposed evidence will be successfully proved. I interpolate to add that the exclusion of witnesses on the principles that I have discussed is not an infringement of the right of an accused person to defend himself. I say this because such a right can be limited by the provisions of any written law (see *Yusuf Husain v Emperor* AIR 1918 All 189). The Evidence Act 1950 limits the type of evidence that is admissible in a trial including the presentation of a defence. Section 136(1) is the vehicle for excluding evidence that is rendered irrelevant by the Evidence Act 1950. The power of the court under this subsection is therefore clear.

The defence gave a summary of the evidence of the proposed witnesses. I shall set out only a brief outline of the proposed evidence, though, in ruling on their relevancy I considered the full summary as disclosed by the defence. Manjeet Singh Dhillon was to testify on his conversation with a senior deputy public prosecutor, Dato Abdul Gani Patail, with regard to the reduction of a charge faced by his client Dato Nallakaruppan. It was alleged that Dato Abdul Gani Patail was not prepared to consider the request for the reduction of the charge unless Dato Nallakaruppan co-operates by implicating the accused by giving information concerning several women. Azmin, while in police custody, was stripped and asked to say that he had been sodomized by the accused and that the accused is corrupt, a womaniser and a sodomist. Jamal is based in the United States. He was asked by a Malaysian Embassy official to fabricate evidence against the accused in return for a big sum of money to say that he had a sexual relationship with him. He refused. Sukma Darmawan, Dr Munawar and Mior Abdul Razak were subjected to extreme mental and physical torture by the police and forced to confess that the accused had sodomized them. Dato Nallakaruppan was also forced to fabricate evidence against the accused. He would testify that the allegations made by SAC Musa in his affidavit dated 2 September 1998 against the accused are fabricated. Three editors from the daily *Nanyang Siang Pau* would prove a statement by YAB Prime Minister to the effect that there might be political instability in the country if the accused is acquitted and that there will be no disorder if there was a conviction.

In submitting that the evidence proposed to be adduced is relevant, the defence said that it must be considered in the light of the fact that the

prosecution evidence is fabricated. The evidence will show the steps taken by the various authorities in order to 'frame' or 'fix-up' the accused. Evidence has been fabricated against him with the prime motive to remove him from his position as Deputy Prime Minister and Minister of Finance. As the defence further said:

> It is our submission that this process of removing the accused was a two-stage process. Firstly, the events of August 1997 arose out of an attempt by several persons in authority to use Azizan and Ummi in order to create false allegations of sexual misconduct against the accused. It is our contention that this plan was not able to come to fruition since it came to the attention of the IGP and the IGP and senior officers of the Special Branch who then actively proceeded on their own in the interests of national security to take the necessary steps to counter the plan to topple the Deputy Prime Minister in 1997. The police kept both accused and the Prime Minister informed of this scheme. Consequently in 1997, the Prime Minister stated that the allegations are not true. As a consequence of that, nothing happened in 1997. With regard to the second stage of the plan to topple accused, it occurred in 1998. Therefore, the old allegations were brought to light. Thus, an explanation had to be given as to why Ummi and Azizan acted the way they did. The most convenient way to explain this is to say that accused directed the police to get the retractions.

It was contended that the defence of fabrication cannot be considered in isolation and all ten charges have to be viewed together. It was then said:

> Right from inception of this case, the defence has been that these charges are false and fabricated. That is the foundation of the defence to all the charges.

It was then argued that the evidence of the proposed witnesses is direct evidence of fabrication of evidence against the accused by the police. The evidence will show the involvement of SAC Musa in the case and the plan by the police to get innocent people to fabricate evidence against the accused. The evidence will show a common modus operandi on the part of the police and is proximate in point of time and method. If this evidence is allowed to be adduced and if accepted by the court, it would render it highly probable that the charges are indeed a fabrication. The evidence is directly relevant to the facts in issue and would form similar fact evidence. The evidence will show a deliberate and well planned system of fabrication constituting a police conspiracy. The evidence is also admissible under ss 6, 7, 8 and 11 of the Evidence Act 1950. The defence then outlined certain points in the proposed evidence to show system. The defence referred to cases such as *R v Phillips* (1936) 26 Cr App Rep 17, *R v Busby* (1981) 75 Cr App Rep 79 and *R v Marsh* (1986) 83 Cr App Rep 165. The prosecution, in its submission, said that the proposed evidence has no connection with the charges. As it is not directly connected to the facts in issue, its admissibility is governed by ss 11 and 15 of the Evidence Act 1950. In order to be admissible, the proposed evidence must be closely connected to the facts in issue. No evidence has been adduced by the defence to show that there is any fabrication of evidence by the police with the result that the provisions of law referred to have no application. In its reply, the defence contended that this is the first time where a senior officer has been removed and thus the purpose of the charges must be considered.

A My first observation is that the first part of the defence submission and its reply are more political in nature and irrelevant. As I have repeatedly advised the defence, the so-called defence of political conspiracy is irrelevant by virtue of the issues to be established by the prosecution. What is relevant is the concept of police conspiracy, if any, to fabricate evidence against the accused. Such a conspiracy must be established by evidence B rendered admissible by the Evidence Act 1950. The proposed evidence relates to collateral facts and such evidence is generally not admissible. However, the proposed evidence may be admissible under ss 11 and 15 of the Evidence Act 1950 if there is compliance with the requirements of the sections which I shall now consider.

C

Section 11 Evidence Act 1950

The section reads as follows:

> Facts not otherwise relevant are relevant —
>
> D (a) if they are inconsistent with any fact in issue or relevant fact;
>
> (b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

This section provides for the relevancy of collateral facts. As *Sarkar on* E *Evidence* (15th Ed) Vol 1 says at p 255:

> This section has been expressed in very wide language, but it does not mean that any and every fact which by a chain of reasoning may be shown to have a bearing, however remote, on any fact in issue or relevant fact, is relevant. ... The words of the section are no doubt very wide, but in determining relevancy, the court in the exercise of a sound discretion should see that the F connection between the fact to be proved and the fact sought to be given in evidence is so close or immediate as to render the co-existence of the two highly probable or improbable. It has been seen that collateral facts are ordinarily excluded and the section embodies one of the instances in which collateral facts may be relevant.

G The words 'highly probable' control the type of collateral facts that may be admitted under this section. As *Sarkar on Evidence* (15th Ed) Vol I says at p 262:

> The words are not 'reasonable probably'. The significant word is 'highly'. This means more than normal standard of probability.

H The collateral facts sought to be admitted must be reasonably conclusive to show that it is consistent or inconsistent with a fact in issue (see *Ismail v Hasnul; Abdul Ghafar v Hasnul* [1968] 1 MLJ 108). Thus, the section makes only those facts admissible which, assuming they are admitted in evidence, will be of great weight in bringing the court to a conclusion one way or the other as regards the existence or non-existence of the facts in question (see I *Re Indian Companies Act* 13 MLT 282, *Govt of Bombay v Merwanji* 10 Bom LR 907, *Bhuiya v Ramkali* AIR 1971 P & H 9). The illustrations to the section indicate clearly what is the standard of high probability or high

improbability that is required before evidence can be admitted under this section (see *Babulal v WIT Ltd* AIR 1957 Cal 709). Illustration (a) to the section deals with the defence of alibi. In the case of that defence, if the element of time of the crime is definitely fixed, and the accused is shown to have been at some other place at that time, the two facts are mutually inconsistent and the truth of the charge cannot be established (see *R v Brennan* (1806) 30 St Tr 58). Thus, proof of the defence of alibi will enable the court to decide one way or the other as regards the truth of the charge. This explains in clear terms the ambit of the section.

Evidence adduced by the defence to show that the police has fabricated or attempted to fabricate evidence against the accused in other instances will not show that the existence of the facts in issue are highly improbable or that they are inconsistent with the facts in issue. Merely because the police had fabricated evidence against the accused in other instances does not mean that the truth of the charges in this case cannot be established. The proposed evidence will not have the weight in bringing the court to a conclusion one way or the other as regards the existence or non-existence of the facts in issue in this case. This is because the connection between the facts to be proved and the facts sought to be given in evidence are not so close or immediate as to render the co-existence of the two highly probable or improbable. It does not have the weight to show that the two facts are mutually inconsistent. The only purpose that the proposed evidence may serve will be to show that by virtue of the conduct of the police in other cases involving the accused, there is a possibility that the same method of fabricating evidence was employed in this case. But a mere possibility does not meet the stringent requirements of the section. Be that as it may, it must be observed that s 11 must be construed as being limited in its operation by s 54 of the Evidence Act 1950. So construed s 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it is cognate. In this regard, I refer to the case of *R v Parbhudas Ambaram* (1874) 11 Bom HCR 90 the headnote of which reads as follows:

> Section 11 of the Indian Evidence Act should not be construed in its widest significance, but considered as limited in its effect by s 54 of the Act. So construed, s 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the evidence of another unconnected crime, even though it is cognate. Accordingly, the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document, with the forgery of which he is charged.
>
> per West J: Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was, in fact, executed by that person, is not admissible, nor even would a judgment, founded upon such note, be so: ss 43 and 153 of the Indian Evidence Act.

On similar principles, the accused would be excluded from adducing the proposed evidence as it is unconnected, even though cognate, with the

A evidence in this case. The proposed evidence cannot therefore be admitted in evidence under this section.

Section 15 Evidence Act 1950

The section reads as follows:

B

> When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that the act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

C This section deals with evidence of similar facts. As Bray J observed in *The King v John Bond* [1906] 2 KB 389 at p 414:

> ... A careful examination of the cases where evidence of this kind has been admitted shews that they may be grouped under three heads:
>
> (1) where the prosecution seeks to prove a system or course of conduct;
>
> D (2) where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake; and
>
> (3) where the prosecution seeks to prove knowledge by the prisoner of some fact.

E To admit evidence under this section evidence of the other acts tendered must be of the same specific kind as that in question. As AT Lawrence J said in *The King v John Bond* [1906] 2 KB 389 at p 424:

> ... In proximity of time, in method, or in circumstances there must be a nexus between the two sets of facts, otherwise no inference can be safely deduced therefrom.

F Thus, facts of a kind different to the main fact or transaction are not admissible. This is illustrated by the case of *The King v Fisher* [1910] 1 KB 149. In that case, the accused obtained a pony and cart from the owner, saying he wanted it for his invalid wife, and that he would take it on a week's trial; he agreed to pay 2*l* for the use of the pony and cart for a week if he did not keep it, and as some sort of security for the price he gave a bill of exchange G for 25*l*. It was proved that his wife was not an invalid and that the whole story was false. The case for the prosecution was that this was a fraudulent transaction. The prosecution adduced in evidence another instance where the accused had obtained provender by falsely representing that he was carrying on a business and was therefore in a position to pay for goods supplied to him. In holding this evidence to be inadmissible, Channell J said at p 153:

H

> Applying these principles to this case, the charge here is that the prisoner obtained the pony and cart from the prosecutor by making certain statements. The falsity of those statements is not proved by giving evidence that in other cases the prisoner made other false statements, though it does tend to shew that the prisoner was a swindler. But there is no rule of law that swindling is, as regards proof, different from any other offence, and if a man is charged with I swindling in a particular manner, his guilt cannot be proved by shewing that he has also swindled in some other manner. We are of opinion that the evidence as to the other cases was inadmissible in this case, because it was not

> relevant to prove that he had committed the particular fraud for which he was being charged, in that it only amounted to a suggestion that he was of a generally fraudulent disposition. On the other hand, if all the cases had been frauds of a similar character, shewing a systematic course of swindling by the same method, then the evidence would have been admissible.

It must be emphasised that similar fact evidence is not necessarily only evidence for the prosecution. The defence may also resort to such evidence. As JRS Forbes says in his book entitled *Similar Facts* at pp 128–129:

> In *Knight v Jones; ex p Jones* (1981) Qd R 98, evidence of illegal or officious conduct by an arresting officer on other occasions was received to explain why the defendant refused to submit to a 'breath test' pursuant to the Traffic Act 1949 (Qld). When similar fact evidence is tendered by an accused person, the policy of balancing probative force against prejudice does not apply and the evidence need only be cogent enough to raise a reasonable doubt (*R v Livingstone* (1987) 1 Qd R 39). However, the requirement of striking similarity still applies.

That requirement was not satisfied in *R v Livingstone* [1987] 1 Qd R 38 where the defendant, in answer to a charge of assaulting a police officer, claimed that the police officer was really the assailant. Evidence of assaults by the same officer on other members of the public fell short of the requisite degree of similarity because it did not reveal an investigative system and was in truth no more than an allegation of unrelated assaults on the two witnesses. On the other hand, there was an investigative system in the South African case of *S v Letsoko* (1964) 4 SA 768 (AD). In that case, the appellants, who were members of the Bantu race, were charged with sabotage. The similar facts question arose upon a voir dire held to consider the admissibility of confessions which were obtained by police violence. In support of their direct testimony on that point, the prisoners sought to lead evidence from other Bantu that the police sabotage squad systematically assaulted all the members of that race or tribe who were arrested on suspicion of committing the offence. It was held that if several of them gave credible evidence of the alleged police 'system', and testified that they, too, had suffered under it, there would be a nexus, sufficient in point of time, method and circumstances to corroborate the appellant's own evidence of violent treatment leading to involuntary confessions.

As I said earlier, in order to render the proposed evidence admissible as similar facts, it must be of the same specific kind as in this case. However, in this case it was not even suggested to the prosecution witnesses in cross-examination that their evidence is fabricated at the instance of the police or the prosecution. The accused merely made some general statements that the evidence against him is fabricated. That, of course, does not mean that the defence set up cannot be considered. In any event, the proposed evidence relates to fabrication and attempts to get fabricated evidence against the accused for sexual misconduct. The evidence of Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz, even if fabricated, relates to directions given for the retraction of allegations of sexual misconduct only and not to allegations of sexual misconduct by them with the accused. The evidence of Ummi and Azizan only relates to the making of allegations and

not the commission of sexual misconduct by them with the accused. Thus the facts of this case have no nexus with the proposed evidence in point of method and circumstance. The evidence of fabrication sought to be elicited from the proposed witnesses and the fabrication of evidence in this case, if any, are therefore not of the same specific kind to show any system. It falls into the category of facts sought to be adduced in *The King v Fisher* [1910] 1 KB 149 and unlike in *S v Letsoko* (1964) 4 SA 768 (AD). The proposed evidence is therefore not admissible as evidence of similar facts.

I therefore ruled the proposed evidence as being irrelevant. It is therefore inadmissible. The statement allegedly made by YAB Prime Minister has absolutely no relevance to the charges. I also disallowed Dr Vasantha Nair, a defence witness, from giving medical evidence on the injuries sustained by the accused as it is not relevant to the charges. On similar grounds, I disallowed the defence application to recall Dr Halim Mansar, a prosecution witness.

(VI) EVIDENCE RELATING TO LEGAL PRIVILEGE

The defence called two advocates and solicitors as witnesses whose proposed evidence relate to communications they had with clients.

One was Sukdev Singh practising under the name and style of Tetuan Azlan Shah, Sukdev & Co. He said he was appointed by Azizan to act for him. The prosecution contended that as Sukdev Singh had said that he had been appointed by Azizan to act for him, it must be shown that he has obtained the express consent of his client before he can disclose any communications between him and Azizan. When asked whether he had obtained the consent of Azizan to disclose communications made to him in the course of and for the purpose of his employment as an advocate and solicitor, he said:

> Saya tidak mempunyai persetujuan atau kelulusan anakguam saya En Azizan bin Abu Bakar seperti yang diminta oleh Tuan Peguam.

In the light of this answer, the Honourable Attorney General asked the court to give the necessary directions at that stage. The defence referred to the evidence of Azizan to argue that as he had said that he was threatened by Sukdev Singh to affirm the statutory declaration (exh D55), the solicitor must be allowed to rebut the allegation. It was further argued that the evidence on the allegation would come within the proviso to s 126 of the Evidence Act 1950 and thereby permit Sukdev Singh to give evidence on the matter. This argument, as pointed out by the Honourable Attorney General, presupposes the fact that exh D55 was affirmed involuntarily. In response to this, the defence said that its contention is that the exhibit was affirmed voluntarily. The other advocate and solicitor called by the defence was Mohd Faiz bin Abdullah ('Mohd Faiz') practising under the name and style of Faiz & Co. In 1998, he acted as solicitor for the accused in a civil suit involving *Buku 50 Dalil*. Whilst handling that matter, he came to know about exh P14C. In early July 1998, he met Azizan in his office with Sukdev Singh and a Malay gentleman. In answer to a question, Mohd Faiz said that

Azizan and Sukdev Singh came to his office for the purpose of discussing matters pertaining to *Buku 50 Dalil*. He then said that Azizan asked to be shown the pengakuan bersumpah contained in *Buku 50 Dalil*. I then asked the defence what evidence it sought to elicit from this witness in order to determine whether s 126 of the Evidence Act 1950 applies. Learned counsel said that this witness will say that when exh P14C was shown to Azizan, he denied that the signature on it was his. The prosecution contended that such evidence is privileged and can be disclosed only as authorized. I then directed that there be further examination of this witness in order to determine whether there was a solicitor client relationship between him and Azizan. When asked by the defence, Mohd Faiz said that he did not act for Azizan and that he did not give any advice to him nor was any advice sought. Under cross-examination by the prosecution, Mohd Faiz said that he posed certain questions to Azizan about exh P14C. He agreed that he also engaged in a conversation with Sukdev Singh in respect of legal issues pertaining to those parts that concerned Azizan. He said that his discussion with Sukdev Singh involved exh P14C and Azizan. He agreed that he offered his advice on certain legal issues to them. The meeting was called by Sukdev Singh. When asked whether he agreed that other than offering his opinion he also offered his assistance to them to do whatever they wanted, Mohd Faiz said:

> I discussed legal issues with Sukdev Singh pertaining to this matter as between lawyers. I offered assistance to Sukdev that I would be prepared to discuss further with him on that matter. Also to look up the law. He offered the same assistance to me.

The defence argued that the question of privilege does not arise in this case as Mohd Faiz was not the solicitor or legal adviser to Azizan. Neither did he take on the role of being a counsel to Sukdev Singh. The discussion that took place was one between two solicitors, each acting for his own client. Thus, any view put forward by either solicitor is not privileged. The contention of the prosecution was that Sukdev Singh went to the office of Mohd Faiz as solicitor for Azizan. The discussion was on *Buku 50 Dalil* as far as it concerned Azizan. It was argued that as Sukdev Singh consulted Mohd Faiz on behalf of Azizan, there was a solicitor client relationship between Azizan and Mohd Faiz.

The arguments advanced before me bring into focus s 126 of the Evidence Act 1950 which reads as follows:

> (1) No advocate shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.
>
> Provided that nothing in this section shall protect from disclosure —
>
> (a) any such communication made in furtherance of any illegal purpose;
>
> (b) any fact observed by any advocate in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

A (2) It is immaterial whether the attention of the advocate was or was not directed to the fact by or on behalf of his client.

This rule is established for the protection of the client, not of the advocate, and is founded on the impossibility of conducting legal business without professional assistance, and on the necessities, in order to render that B assistance effectual, of securing full and unreserved intercourse between the two (see *Jones v Great Central Railway Company* [1910] AC 4, *Lyell v Kennedy (no 2)* (1883) 9 App Cas 81, *Wheeler v Le Merchant* (1881)17 Ch D 675). As Jessel MR said in *Anderson v Bank of British Columbia* (1876) 2 Ch D 644 at p 649:

C ... it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have recourse to the assistance of professional lawyers, and it being so absolutely necessary, it is equally necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentleman and whom he consults with a view to the prosecution of his claim, or the substantiating his defence against the claim of others; that he should be able to place unrestricted and unbounded confidence in the D professional agent, and that the communcations he so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation. That is the meaning of the rule.

It must be observed that the strict enforcement of this rule will sometimes E operate so as to exclude the truth. However, as *Sarkar on Evidence* (15th Ed) Vol II says at p 2027:

... but if any law reformer feels inclined to condemn the rule on this ground, he will do well to reflect on the eloquent language of the late Knight Bruce LJ, who falicitously observed:

'Truth, like all other good things, may be loved unwisely — may be F pursued too keenly — may cost too much. And surely the meanness and the mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, suspicion, and fear, into those communications which must take place, and which, unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself (*Pearce v P* (1846) 16 LJ Ch 153; Tay s 915).'

G It is not every communication made by a client to an advocate that is privileged from disclosure. However, whatever a man says to his legal adviser about his private affairs with a view to obtaining professional advice is presumed to have been said in confidence and the object is to protect all H such confidential communications (see *Sarkar on Evidence* (15th Ed) Vol II p 2034). The privilege also extends to acts of the client observed by the advocate (see *Robson v Kemp* 5 Esp 52). As the privilege is that of the client, he may expressly waive it under s 126 or impliedly under s 128 of the Evidence Act 1950 by calling the advocate as his witness.

I shall first consider the position of Sukdev Singh. The evidence that the I defence intended to elicit from him is that exh D55 was affirmed voluntarily by Azizan and that he must also be allowed an opportunity to rebut the allegation that Azizan had been threatened by him to affirm the exhibit.

With regard to the question of whether exh D55 was affirmed voluntarily, it would relate to evidence of what Azizan had told the solicitor and what the solicitor may have observed from the acts of Azizan regarding the affirmation of the exhibit. This raises the issue of whether a solicitor may disclose the circumstances in which his client executed a document without the express consent of the client. In making a ruling, I was guided by the judgment of Abdul Malek Ahmad J (as he then was) in *Subrayan v Sinnan* 7 *Mallal's Digest* (1998 Reissue) para 1727. In that case, P applied for a declaration that the land registered in the name of D was actually being held by D in trust for him absolutely. P also applied for an order that D tranfers the land to him and for an injunction to restrain D from transferring the land to any other person. P stated that he had paid for the land and that D was registered as the owner of the land for administrative convenience. D denied P's story and stated that he had bought the land with a loan from P. The court disallowed X and Y, who were advocates and solicitors in the transaction, from giving evidence relating to the land based on s 126. Accordingly, I held that Sukdev Singh is precluded from giving evidence on the circumstances in which exh D55 was executed to show that it was affirmed voluntarily in the absence of express consent from Azizan. The argument that such evidence is permissible under the proviso to s 126 cannot be sustained as it is the contention of the defence that exh D55 was affirmed voluntarily. Thus, the question of it being executed for an illegal purpose or as showing that any crime or fraud has been committed does not arise. The proviso to s 126 is therefore inapplicable. The further argument that a solicitor must be allowed to rebut an allegation made by his client in order to clear his name notwithstanding the fact that he has not obtained express consent from his client to do so is indeed attractive. Surely, a client cannot be allowed to make unfounded allegations against his solicitor and leave the solicitor defenceless to clear his name. Such a situation must, however, be balanced against the need to adhere to the rationale underlying the law relating to privilege and the right of the solicitor to defend himself. The first matter that arises for determination is whether the fact that Azizan has made an allegation against Sukdev Singh in cross-examination means that he has consented to waive his privilege. The answer given by Azizan in cross-examination is a result of his failure to claim privilege. Such failure on the part of a client to claim privilege when he is under cross-examination does not amount to 'express consent' given by him to his legal adviser to disclose a communication which is otherwise privileged under s 126 (see *Bhagwani v Deooram* AIR 1933 Sind 47). It follows that Sukdev Singh would not be able to tell his side of the story without express consent from Azizan. This may appear to prejudice the position of Sukdev Singh. The judgment of Bayley J in *Cooke v Maxwell* (1817) 2 Stark 183; 171 ER 614 provides a guideline to find a solution to the problem. This is what his Lordship said with regard to a document which is partly privileged and partly not at p 615:

> And that supposing the document, on principles of public policy, to be excluded, no parol evidence could be received of any part, since this would be prejudicial to the party to be affected by it, since part would be revealed, and

A that which tended to give an explanation of it in favour of the party, might be excluded.

In the circumstances, it is my view that as Sukdev Singh is precluded from giving an explanation regarding the allegation made by Azizan, the relevant evidence of Azizan must be excluded in the interest of justice. I therefore
B ruled that the part of the evidence of Azizan that makes an allegation against Sukdev Singh is to be treated as irrelevant both against Sukdev Singh and for the purpose of making a decision in this case.

I shall now consider the position of Mohd Faiz. He was the solicitor for the accused in respect of a defamation suit regarding *Buku 50 Dalil*. He had
C a meeting with Azizan and Sukdev Singh at the request of the latter. Both solicitors assisted each other with mutual offers of further assistance in the affairs of their respective clients. That has made them agents of each other. Insofar as the issue before me is concerned, Mohd Faiz has become the agent of Sukdev Singh. His position is therefore governed by s 127 of the Evidence Act 1950 which reads as follows:

D

> Section 126 shall apply to interpreters and the clerks or servants of advocates.

In commenting on this section, *Sarkar on Evidence* (15th Ed) Vol II says at p 2046:

> As it is not possible for lawyers to transact all their business in person and they
> E have to employ clerks or agents, the privilege necessarily extends to facts coming to their knowledge in the course of their employment. The protection extends to all the necessary organs by which such communications are effected and therefore an interpreter, or an intermediate agent is under the same obligations as the legal adviser himself. The rule also extends to a solicitor's town or local agent (Tay s 920). It has never been questioned that
> F the privilege protects communications to the attorney's clerks and his other agents for rendering his services (Wig s 230).

Mohd Faiz is therefore in the same position as Sukdev Singh and may disclose communications made to him by Azizan only with the express consent of the latter.

G

THE SUBMISSION OF PARTIES AT THE CLOSE OF THE CASE FOR THE DEFENCE

At the close of its case, the defence submitted that the prosecution has not proved its case beyond reasonable doubt to which the prosecution replied.
H I allowed the defence application to reply to the points raised by the prosecution though there is no such right in law. I did so as ideally it should be for the prosecution to submit first since it carries the burden of proof with the defence having the last say. I gave anxious consideration to the submissions of both parties.

I I shall now deal with some of the arguments raised by the defence.

(A) EVIDENTIAL VALUE OF NEWSPAPER REPORTS

The defence tendered in evidence certain newspaper reports. They are as follows:

Exhibit D23

This is a press statement by YAB Prime Minister dated 25 August 1997 in *The New Straits Times* where he said that the accusations against the accused are ridiculous based on a report that he had received. He said that the police had investigated the matter and had concluded that there was no case.

Exhibit D24

This is a press statement dated 3 September 1997 in *The News Straits Times* by the IGP where he said that the allegations against the accused have been found to be untrue.

Exhibit D75

This is another press statement dated 3 September 1997 in *The Sun* by the IGP where he said that the two authors of poison-pen letters alleging that the accused was involved in sex scandals have confessed that they fabricated the matter.

Exhibit D129

This is a press statement dated 26 August 1997 in *The New Straits Times* by the accused saying that as stated by YAB Prime Minister the allegations are baseless and should not be pursued.

Exhibit D132

This is a press statement dated 26 August 1997 in *The Sun* by the accused about the allegations against him.

Exhibit D134

This is a press statement dated 25 August 1997 in *Utusan Malaysia* by YAB Prime Minister saying that the allegations against the accused are slanderous with a political motive.

The defence called in evidence the reporters who were present at the various press conferences described above. They confirmed that they were at the press conferences and took down notes of the speeches and that the respective press statements are their stories. They also said that no attempts were made by the persons who made the speeches to have the stories corrected. They also produced original copies of the newspapers in which the statements appeared from their file. As they wanted the original newspapers back, I permitted photostat copies to be tendered in evidence.

The issue that arose for determination with regard to these exhibits was whether the press statements can be taken in proof of the truth of their contents in the absence of the persons who gave the statements being called as witnesses. The defence, in its well presented argument, referred to s 81 of the Evidence Act 1950 and some Indian authorities to argue that with the

calling of the reporters, the press statements are admissible to establish the truth of the statements made. The prosecution contended that, in the absence of the makers of the statements being called as witnesses, the press statements amount to hearsay.

The answer to the rival contentions lie, as argued by the defence, in s 81 of the Evidence Act 1950 which reads as follows:

> The court shall presume the genuineness of every document purporting to be the *Gazette*, a State *Gazette* or the London *Gazette*, or the Government *Gazette* of any part of the Commonwealth, or to be the *Gazette* issued by the local Government of any part of the Commonwealth, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by Her Britannic Majesty's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from proper custody.

For the purpose of the argument before me, the part of the section that is relevant is only the part which deals with the presumption of genuineness of newspapers. It must first be observed that the presumption contained in this section is rebuttable pursuant to s 4(2) of the Evidence Act 1950. On the evidential value of a newspaper report, a mere production of it is not proof of the truth of its contents (see *Bawa Sarup Singh v Crown* AIR 1925 Lah 299). In this regard, the Supreme Court of India observed in *Samont N Balakrishna v George Fernandez* [1969] 3 SCR 603:

> A newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process, the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

As the Indian Supreme Court said in *Laxmi Raj Shetty v State of Tamil Nadu* AIR 1988 SC 1274, it is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. In order to render the newspaper report admissible in evidence to prove its contents, the person who made the speech, or the person in whose presence the speech was made, or the reporter of the newspaper, who heard the speech and sent the report to be published in the newspaper, must be produced (see *Khilumal v Arjundas* AIR 1959 Raj 280). It is my view that proof of a newspaper report by a person other than by the person who made the speech is rendered admissible as an exception to the hearsay rule by virtue of the presumption of genuineness attached to a newspaper by this section. Pursuant to this presumption, the report is presumed to be accurate, unless rebutted, thereby removing the reasons for which hearsay is excluded. I therefore hold that the newspaper reports tendered by the defence are admissible in evidence to establish the truth of their contents.

(B) COMPLICITY OF PROSECUTION WITNESSES

The defence repeated its submission made at the close of the prosecution case that Dato Mohd Said and Dato Amir Junus are accomplices. It was contended that the prosecution's reply at the end of its case that they are not accomplices cannot be sustained. In the absence of any other evidence coming on record, I still hold that Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz are accomplices. It is my finding, based on the whole of the evidence adduced, that their evidence is credible. With regard to Dato Amir Junus, the evidence adduced by the defence on his business interests is largely the same as it was earlier. Thus, I see no reason to review my finding on his credibility on account of this reason. It must be observed that his credibility is enhanced by the contemporaneous notes that he had kept.

(C) ADMISSIBILITY AND EVIDENTIAL VALUE OF EXH D123

This exhibit, according to the accused, was the second report given to him by Dato Mohd Said on 3 September 1997. He said that it was located only about a week before he gave evidence on 9 February 1999 by his wife from some boxes. Datin Seri Wan Azizah bte Wan Ismail, the wife of the accused, said that her husband gave it to her in early September 1997. She read it and kept in a cupboard. When they moved out of their Official Residence on 3 September 1998, it was packed in one of the boxes. She said that she found it about a month before she gave evidence on 12 March 1999 and handed it to the lawyers.

Dato Mohd Said was recalled by the defence to identify this report. When he was asked whether it is a report from the Special Branch, he said that it looks like one though he is not very sure. He said that he is not sure because it does not have a file reference number and is not signed. He said that where such a report is not signed it is followed by a covering letter. The covering letter would be addressed to the person to whom the unsigned report is given. He said that the contents of the report appear familiar to him. He agreed that the report appears to be an extension of exh D25 and that the contents of both reports are related. He also said that the prints on both the reports appear to be the same. The cross-examination of Dato Mohd Said then goes this way:

Question : I am putting it to you that IDD123 is a copy of the Special Branch report which was given by you to Dato Seri Anwar on 3 September 1997.

Answer : No.

Question : I also put it to you that this is your second report following D25.

Answer : No. It is not my second report.

The defence argued that the report ought to be admitted in evidence in proof of its contents and referred to the evidence of Dato Mohd Said on the similarities between this report and exh D25 to support its argument. It was contended that the mode and manner in which the report was ultimately found was convincingly explained by the accused and Datin Seri Wan Azizah bte Wan Ismail. Thus, the defence said, there is no reason to doubt

A that the report is indeed and in fact a report of the Special Branch which was handed over to the accused on 3 September 1997 and, accordingly, should be admitted in evidence on the authority of *Dato Mokhtar bin Hashim v PP* [1983] 2 MLJ 232 and *Datuk Haji Harun bin Haji Idris & Ors v PP* [1978] 1 MLJ 240. In opposing this submission, the prosecution contended that Dato Mohd Said had said that there was no second report.
B Dato Mohd Said had also denied that it is the second report and had said that he was not sure that it is a Special Branch report because it has no file reference number and a covering letter.

As stated by Dato Mohd Said, the report does not have a file reference number and a covering letter which reports of this nature have. He has denied
C having given D123 to the accused and that it is his second report. I am inclined to accept his evidence on this issue as I find it strange that a person in the capacity of the accused would take home what is purportedly a highly confidential document. It is more strange for him to have given it to his wife who kept it in the cupboard after having read it herself. Therefore, it is my finding that exh D123 is not a copy of the so-called second report as claimed
D by the defence. Hence it cannot be admitted in proof of its contents. However, I admitted it as a document claimed by Datin Seri Wan Azizah bte Wan Ismail to have been received by her from her husband. In the light of the background surrounding the report, it is not entitled to any evidential value.

E (D) POLICE STATEMENTS OF UMMI AND AZIZAN

After Ummi and Azizan gave their written statements, that is to say, exhs P17 and P18, they also gave a statement to the police pursuant to s 112 of the Criminal Procedure Code. The defence contended that these police statements ought to have been adduced in evidence by the prosecution
F under s 157 of the Evidence Act 1950. The police statements would show whether they are consistent with or in conflict with exhs P17 and P18. In the absence of the prosecution having produced them, it was argued, they should be treated as being consistent with exhs P17 and P18. In fact, the defence added, the evidence of SAC Musa to the effect that the police statements of Azizan were consistent mean that they must be consistent with
G exh P17.

I shall first refer to the evidence of SAC Musa in order to ascertain whether the defence is correct in its conclusion that Azizan's police statements are consistent with exh P17. That is what he said in cross-examination:

> Azizan telah membuat lebih kurang lima pernyataan. Tidak ada pernyataan
H yang dibuat oleh Azizan yang dia menafikan bahawa dia diliwat oleh tertuduh.

Without for a moment going into the truth of the allegations, it is my view that SAC Musa's evidence shows that the statements given by Azizan are inconsistent with exh P17. SAC Musa's evidence would therefore, contrary to the submission of the defence, strengthen the case for the prosecution in
I that exh P17 is not a reflection of what Azizan had stated in his police statements. It is perhaps for this purpose that the prosecution re-examined SAC Musa when he said that Azizan made only one statement in respect of this case and another four in respect of exh P49 in this line:

> Apakah yang dinyatakan oleh SP12 (Azizan) di dalam percakapannya di bawah s 112 berkaitan dengan tertuduh?' A

This question was met with vehement objection by the defence. My notes of evidence on the objection reads as follows:

> (Encik Bachan objects as the contents of a s 112 statement is not admissible.) B

I disallowed the question based on the objection taken. It is indeed bizarre for the defence, having objected to the admissibility of Azizan's statement earlier, to now take a diametrically different stand on the failure by the prosecution to produce it.

Be that as it may, I shall now consider the argument raised by the defence in an objective manner. A police statement recorded under s 112 of the Criminal Procedure Code is absolutely privileged (see *Martin Rhienus v Sher Singh* [1949] MLJ 201; *Husdi v PP* [1979] 2 MLJ 304). However, the defence may have access to it for the purpose of impeaching the credit of a witness (see *Husdi v PP* [1980] 2 MLJ 80). It is made admissible in evidence by s 157 of the Evidence Act 1950 which reads as follows: C D

> In order to corroborate the testimony of a witness, any former statement made by him whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

The words in the section '... or before any authority legally competent to investigate the fact ...' clearly refer to a police statement made in the course of a police investigation. I pause to add that the statement can be used under this section only to show consistency and not for purposes of corroboration (see *Aziz bin Muhamad Din v PP* [1996] 5 MLJ 473). As I said in an earlier part of the judgment, it should be used only when the testimony of the witness who made the statement has been challenged. I consider it necessary to make an observation on the application of the section in the light of the objection raised. The use of the words '... may be proved' in the section make the use of a former statement for the purpose of the section discretionary. Thus, the prosecution may, if it so desires, waive the privilege attached to a police statement and use it for the purpose of the section. A failure to use it can never be fatal to the prosecution case as it would only be the prosecution which will suffer as a result of not using a prior consistent statement to bolster the credit of a witness which has been challenged. It will therefore cause no prejudice to the defence. On the contrary, it will be to its advantage. If the defence has a hunch that the statement is inconsistent with a witness's testimony in court, then an application should be made to impeach the credit of the witness by use of the statement. In any event, as a police statement is privileged, no adverse inference can be drawn from his non-production. This is based on the principle that the drawing of an adverse inference for the failure to produce a privileged document would be to destroy the privilege itself (see *Weston v Peary Mohan Dass* (1912) ILR 40 Cal 898, *Dulhin v Harnandan* 30 MLJ 624; AIR 1916 PC 157). E F G H I

Having had the opportunity to study the law in some detail in order to resolve the objection raised by the defence, now I must say, with a sense of

regret, that I had erred when I disallowed the prosecution from adducing in evidence, through SAC Musa, the statement made to the police by Azizan. I make no comment now on the conduct of the defence in taking the inconsistent stand with regard to the police statement of Azizan except to leave it to them to battle with their own conscience. In the premises, the objection raised by the defence is totally unwarranted and I reject it in the strongest possible terms.

(E) WHETHER STATEMENTS MADE BY THE ACCUSED AMOUNT TO HEARSAY

The defence started off this part of the submission by saying that I had ruled, despite objections, that the evidence of the conversation which the accused had with YAB Prime Minister, the Honourable Attorney General, the IGP and others are hearsay. The submission then runs this way:

> The defence had no choice but to accept this court's ruling graciously despite the defence disagreement. That being so, then the same law and ruling must apply to the prosecution. This would mean that all the evidence of PW1, PW11, PW12 and PW13 where DSAI allegedly stated certain things, including most importantly the alleged instruction given to SP1 and SP11, must of necessity and pursuant to and in accordance with this honourable court's ruling, be applied with equal rigor and force against the prosecution and all such evidence of what allegedly DSAI said must be ruled inadmissible and therefore expunged. The law must apply equally and in the same manner to the prosecution and the defence. That will leave not an iota or shred of evidence against DSAI and as night follows day and day follows night DSAI on this ground alone must be acquitted.

The opening part of this submission would seem to suggest that I had erred in excluding the alleged conversations that the accused had with certain persons despite strong objection. The basis upon which I made the ruling is the very basis upon which the defence had on numerous occasions objected to prosecution witnesses giving evidence of out of court statements. It is sufficient for me to refer to just one example from the examination-in-chief of SAC Musa. It is as follows:

> Question : Bagaimana kamu tahu bahawa ID38A–V adalah dokumen yang ditulis tangan oleh Ummi?
>
> Answer : Saya mengetahui yang ID38A–V adalah tulisan Ummi kerana beliau memberitahu saya bahawa ini adalah tulisan tangannya. (Encik Bachan says that this is hearsay as Ummi must be called. DPP says admissibility and weight must not be confused.
>
> Court : The statement to be proved by Ummi.)

It can thus be comprehended with ease that the ruling that I made with regard to the conversations referred to in this objection is as the night follows the day and the day follows the night.

Having said that, I shall consider whether the out of court statements of an accused person amount to hearsay. This requires a consideration of ss 17, 18 and 21 of the Evidence Act 1950 which deal with admissions. Section 17 says that:

> An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Section 18(1) provides that statements made by a party to the proceedings are admissions. The word 'proceeding' in s 18(1) may be civil or criminal (see *Sarkar on Evidence* (14th Ed) Vol I p 323). An accused is a 'party to the proceeding' (see *Sarkar on Evidence* (15th Ed) Vol I p 372). As the *Law of Evidence* by Woodroffe and Amir Ali (16th Ed) Vol 1 says at p 739:

> In criminal cases, the accused is always a party, and his admissions are admissible against him, subject of course to the provisions of ss 24 to 27.

A party's own statements are in all cases admissible against himself (see *Slatterie v Pooley* 6 M & W 664). Thus, s 21 provides, inter alia, that admission are relevant and may be proved as against the person who makes them. An admission is treated as an exception to the hearsay rule and thus admissible. As *Sarkar on Evidence* (14th Ed) Vol I says at p 309:

> The ordinary idea of hearsay is what is heard out of court from a non-witness, and admissions are therefore generally treated as exceptions to the hearsay rule. Admissions are not, however, open to all the objections applicable to hearsay testimony. It is true that they are unsworn statements made out of court like hearsay testimony, but they are statements not of third persons but of a party to the proceeding and for the reason stated about what a party said against his interest may be presumed to be true.

An admission is therefore substantive evidence of the fact admitted (see *Union of India v Koksh Builders and Financiers* AIR 1977 SC 409, *Lam Choon & Co v Lim Yam Hong* (1931) SSLR 96). This rationale is lucidly explained by Subba Rao J in *Sahoo v State of UP* AIR 1966 SC 40 at p 42 in the following words:

> A scrutiny of the provisions of ss 17 to 30 of the Evidence Act discloses as one learned author puts it, that statement is a genus, admission is the species and confession is the sub-species. Shortly stated, a confession is a statement made by an accused admitting his guilt. What does the expression 'statement' mean? The dictionary meaning of the word 'statement' is 'the act of stating, reciting or presenting verbally or on paper. The term 'statement', therefore, includes both oral and written statements. Is it also a necessary ingredient of the term that it shall be communicated to another? The dictionary meaning of the term does not warrant any such extension; or the reason of the rule underlying the doctrine of admission or confession demands it. Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be. The following illustration pertaining to a written confession brings out the said idea; A kills B; enters in his diary that he had killed him, puts it in his drawer and absconds. When he places his act on record, he does not communicate to another; indeed, he does

not have any intention of communicating it to a third party. Even so, at the trial the said statement of the accused can certainly be proved as a confession made by him. If that be so in the case of a statement in writing, there cannot be any difference in principle in the case of an oral statement. Both must stand on the same footing. This aspect of the doctrine of confession received some treatment from well-known authors on evidence, like Taylor, Best and Phipson. In *'A Treatise on the Law of Evidence'* by Taylor (11th Ed) Vol I, the following statement appears at p 596:

> 'What the accused has been overheard.muttering to himself, or saying to his wife or to any other person in confidence will be receivable in evidence.'

In *The Principles of the Law of Evidence* by WM Best (12th Ed), at p 454, it is stated much to the same effect thus:

> 'Words addressed to others, and writing, are no doubt the most usual forms; but words uttered in soliloquy seem equally receivable.'

We also find the following passage in *Phipson on Evidence* (7th Ed). At p 262:

> 'A statement which the prisoner had been overhead muttering to himself, if otherwise than in his sleep, is admissible against him, if independently proved' .

Further reference may be made to *Wigmore on Evidence* Vol IV 1048 (at p 3) as follows:

> The theory of the hearsay rule that an extra-judicial assertion is excluded unless there has been sufficient opportunity to test the grounds of assertion and the credit of the witness by cross-examination by the party against whom it is offered, eg if Jones had said out of court: 'The party-opponent Smith borrowed this fifty dollars', Smith is entitled to an opportunity to cross-examine Jones upon that assertion. But if it is Smith himself who said out of court, 'I borrowed this fifty dollars,' certainly Smith cannot complain of lack of opportunity to cross-examine himself because his assertion is admitted against him. Such a request would be absurd. Hence, the objection of the hearsay rule falls away, because the very basis of the rule is lacking, viz the need and prudence of affording an opportunity of cross-examination.

I therefore hold that the statements made by the accused to Dato Mohd Said and Dato Amir Junus, being relevant, are admissible. It is superfluous to state that any statement allegedly made by the accused which does not suggest any inference as to any fact in issue or relevant fact would not amount to an admission and would therefore be inadmissible. Thus, the objection raised cannot be sustained.

(F) FAILURE TO CALL EVIDENCE IN REBUTTAL

In the course of giving evidence, the accused narrated certain conversations that he had with YAB Prime Minister and the IGP. When the accused gave evidence of these conversations, the defence had intimated to me that the makers of the statements may be called to prove the conversations. I then made a ruling that pending proof of the conversations, the evidence given by the accused is not to be published by the media. The defence closed its case without calling the relevant persons as witnesses. The objection now raised is worded as follows:

> The prosecution although indicating that they may call rebuttal evidence did not do so. As such, it is submitted that the adverse inference against the prosecution should be invoked for failure to call rebuttal evidence from the Honourable Prime Minister, the Honourable AG, the IGP, Dato Megat Junid and Tun Daim. The defence cannot be expected to call the said witnesses who are so obviously hostile against DSAI. These witnesses were specifically named in the prosecution and defence case and yet no attempt was made to call them in the prosecution case, or at least, offer them for cross-examination to the defence or even as rebuttal witnesses of which the prosecution gave notice to the defence in the defence case.

This is indeed a very peculiar submission. As I have stated in an earlier part of the judgment, it is not part of the prosecution's duty to prove the case for the defence. Yet that is what this submission demands. The witnesses referred to were made available to the defence. The defence exercised its right to call all of them except the Honourable Attorney General. As I had stated in an earlier part of the judgment, they are not material to the case for the prosecution. If the defence had felt that they were material to its case, it ought to have called them. The failure to call them, though no adverse inference can be drawn therefrom, on the ground that they may be hostile indicates the defence's lack of confidence in having them in the witness stand. The defence must be aware of s 154 of the Evidence Act 1950 which deals with the manner of treating hostile witnesses. To therefore argue that the prosecution ought to have called them on that ground cannot be sustained. Be that as it may, the question of rebuttal evidence from these witnesses arises only if the defence had successfully adduced evidence that requires to be rebutted by them. In the case of the alleged conversations that the accused had with YAB Prime Minister, the Honourable Attorney General, the IGP and Tun Daim such evidence, being hearsay, are inadmissible. Thus, the prosecution has nothing to rebut. The question of raising an adverse inference for a failure to call them therefore does not arise.

(G) SHOWING OF POLICE STATEMENT TO A WITNESS IN THE COURSE OF HIS CROSS-EXAMINATION

I had allowed the prosecution to show MaAmin parts of his police statement when he was being cross-examined. In submitting that I was wrong in doing so, the defence said:

> It is respectfully submitted that Your Lordship erred in allowing the prosecution, despite the defence objection, to show DW9 his s 112 statement and to be cross-examined on it.
>
> It is submitted that the contents of s 112 statements are inadmissible in evidence. The prosecution cannot be allowed to adduce the contents of s 112 statements indirectly under the guise of cross-examination. The only manner in which a s 112 statement and its contents can be brought in on record is and only if impeachment proceedings under s 155 of Evidence Act 1950 is undertaken. There was no attempt by the prosecution to institute impeachment proceedings. As such, the usage of s 145 of Evidence Act to show the contents to the Honourable Court and cross-examination of a

witness thereon without applying to impeach is wrong in law. It is an indirect way to admit the contents of s 112 statement as evidence.

In this regard, we would like to point out that the attempt by the defence to cross-examine Ummi (PW17) by her statement on tape recording was denied. We submit that s 145 is a step towards impeachment under s 155 and unless an application for impeachment is intended or made, s 145 cannot be utilized.

The first observation that I would like to make is that the comparison made to the rejection of the application to cross-examine Ummi on certain taped conversation is totally unmerited. The application was rejected for different reasons.

The episode relating to the showing of the police statement to MaAmin started this way. On 2 March 1999 when MaAmin was being cross-examined, the prosecution made an attempt to refer him to his police statement. The defence objected. I upheld the objection because s 145(1) of the Evidence Act 1950 clearly states that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question to the suit or proceeding in which he is cross-examined, without the writing being shown to him or being proved. On 3 March 1999, when the prosecution asked MaAmin whether he wished to see his police statement, I reminded the prosecution of the ruling that I had made the previous day. The prosecution gave an explanation for asking MaAmin the question with which I did not agree. The proceeding then took this course:

(DPP now says that he wishes to show witness the statement with the object of finding the truth and giving him a chance of explaining the discrepancies in the interest of justice under s 145(1) of Evidence Act 1950.)

Haji Sulaiman

We have had a look at *Moomin*'s case. Prosecution must say that they are going to contradict the witness. Defence has no objection if court and defence have sight of the relevant part of the statement.

Dato Gani

Prosecution proposes to show two parts to witness.

Court

Copy of relevant parts to be shown to court in order to determine whether they are relevant. (Court adjourns for a while to read the material parts of the statement.)

Court

Does the defence wish to see the statement?

En Bachan

Yes.

(Document shown to defence. Document to be marked as P130.)

En Bachan

Concede that as contended by DPP there is a discrepancy but it is minor and not relevant.

Court

It is relevant and is a major inconsistency. DPP to proceed.

The relevant parts of the police statement were then shown to MaAmin. After MaAmin gave an explanation on the inconsistency between his evidence in court and what he had stated in his police statement, the learned senior deputy public prosecutor said that he did not wish to go further into the issue. Thus, the matter ended at that stage.

The extract from my notes of evidence which I have reproduced shows in unmistakable and crystalline terms that the police statement was shown to MaAmin with the full consent and knowledge of, and, with participation by the defence. To now argue that the court allowed the statement to be shown to the witness '... despite the defence objection ...' is a misrepresentation of what transpired in court. Even if the defence is referring, due to an oversight, to the first occasion when objection was raised to the statement being shown to MaAmin, there is absolutely no justification for doing so as the objection raised was upheld. It is perhaps appropriate for me to state that submissions made by counsel must be reflective of what actually transpired in court.

Be that as it may, I do not see anything wrong with the procedure adopted by the prosecution in showing the statement to the witness. The prosecution, as intimated to the court, was proceeding in accordance with s 145(1) of the Evidence Act 1950. The statement was shown to the witness pursuant to the second part of the subsection which states that:

> ... but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

The words '... which are to be used for the purpose of contradicting him' mean that before the process of contradiction takes place, the statement may be shown to the witness. As *Sarkar on Evidence* (14th Ed) Vol II says at p 2035:

> The object is to give him a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute.

That is precisely what the prosecution did. After MaAmin gave an explanation, the prosecution decided not to proceed any further. In the circumstances, the objection raised by the defence has absolutely no merit.

PRINCIPLES GOVERNING THE CONDUCT OF A DEFENCE

Before I embark on a consideration of the whole of the evidence in order to decide whether the prosecution has proved its case beyond reasonable doubt, I consider it necessary to refer to some principles governing the conduct of a defence.

If the accused intends to suggest that a prosecution witness is not speaking the truth on a particular point, the witness's attention must be directed to that fact in cross-examination. In support, I can do no better than refer to the words of Lord Chancellor Herschell in *Browne v Dunn* (1893) 6 R 67 where his Lordship said at p 70:

> Now, My Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him, and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses.

The effect of a failure to cross-examine a witness on a material point was lucidly explained by Raja Azlan Shah CJ (Malaya) (as His Highness then was) in speaking for the Federal Court in *Wong Swee Chin v PP* [1981] 1 MLJ 212 at p 213 in the following terse words:

> Mr Jagjit Singh also raised as one of his main grounds of appeal that the trial judge erred in law when he held that the failure of the defence to cross-examine the two prosecution witnesses on the ammunition actually found in the trouser pockets of the appellant at the time of his arrest (the subject-matter of the third charge) consituted a clear admission of the charge of possession by the appellant. We consider that statement of the law as a misdirection. A correct statement of the law is that failure of the defence to cross-examine the prosecution witnesses on the matter merely goes to the credibility of their testimony, to wit, the fact that they found the ammunition in the appellant's trouser pockets remains unshaken. On this point, we need only say there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony. But as is common with all general rules, there are also exceptions as pointed out in the judgment of the Supreme Court of New Zealand in *Transport Ministry v Garry* [1973] 1 NZLR 120 where Haslam J said at p 122:
>
> > 'In *Phipson on Evidence* (11th Ed) para 1544, the learned authors suggest examples by way of exception to the general principle that failure to cross-examine will amount to an acceptance of the witness's testimony, viz where:
> >
> > > " ... the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy ... or when counsel indicates that he is merely abstaining for convenience, eg, to save time. And where several witnesses are called to the same point, it is not always necessary to cross-examine them all."

The nature of the defence is to be ascertained not only from the evidence of the accused himself but also from the trend of the cross-examination of the prosecution witnesses and from the arguments of the accused's counsel at the close of the trial (see *Kuli & Ors v Emperor* AIR 1930 Cal 442). It is therefore important for the accused to put his essential and material case to the prosecution witnesses in cross-examination. This is a principle of essential justice and was neatly stated by Mukhrji J in *AEG Carapiet v AY Derderian* AIR 1961 Cal 359 in the following terms:

> The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.

On the effect of a failure by the defence to put its case to the prosecution witnesses, useful reference may be made to *Alcontara all Ambross Anthony v PP* [1996] 1 MLJ 209 where Edgar Joseph Jr FCJ said at p 218:

> Speaking generally, in a criminal trial, the whole point and purpose of the defence having to put its case to such of the prosecution witnesses as might be in a position to admit or deny it, is to enable the prosecution to check on whether an accused's version of the facts is true or false, and thus avoid the adverse comment, that the defence is a recent invention — in other words, 'kept up its sleeve', as it were — and revealed for the first time when the accused makes his defence from the witness box or the dock, thus detracting from the weight to be accorded to the defence. However, failure on the part of the defence to put its case, as aforesaid, can never, by itself, relieve the prosecution of its duty of establishing the charge against the accused beyond any reasonable doubt.
>
> ... it is settled law that, although a court may view with suspicion a defence which has not been put to the appropriate prosecution witnesses who might have personal knowledge of the points at issue, the court is still bound to consider the defence, however weak, and to acquit if not satisfied that the prosecution has discharged the burden of proof which tests upon it.

The position is, however, different when the new defence raised could not have been raised at an earlier stage (see *Emperor v Kameshwan Lal & Ors* AIR 1933 Pat 481).

REASSESSMENT OF CREDIBILITY OF WITNESSESS FOR THE PROSECUTION

I have already dealt with the credibility of the prosecution witnesses at the close of the case for the prosecution. A reassessment of their credibility and the credibility of the defence witnesses on the whole of the evidence adduced is to a large extent interwoven with the defence evidence advanced.

A This will become apparent when I consider whether the prosecution has proved its case against the accused beyond reasonable doubt. However, the credibility of Ummi and Azizan requires immediate consideration in the light of certain evidence that was adduced.

B (I) UMMI

The defence called evidence in an attempt to show that Ummi affirmed exh D90 voluntarily. If successfully proved, this will have a bearing on the credibility of Ummi. It will be recalled that she said in her evidence that the exhibit was prepared by a lawyer called Yeoh and that she was pressured by her brother Azmin, through Dato Sng Chee Hua, to affirm it. In order to C establish the voluntariness of this exhibit, the relevant evidence adduced by the defence is that of Azmin, Nor Azman and Ngui Kee Heong. Dato Sng Chee Hua was not called as a witness. Neither was lawyer Yeoh called on the ground as stated by the defence:

> D We were proposing to call lawyer Yeoh Chong Keong who was the lawyer involved in the preparation of D90. In view of the court's ruling under ss 126 and 127 of Evidence Act concerning professional privilege, we are unable to call him for the same reasons.

Azmin said that he met Ummi on 30 June 1998. On being asked whether she mentioned exh D90 at this meeting, he said:

> E Ummi ada menyebut kepada saya bahawa kalau saya tidak percaya dengan pengakuan-pengakuan beliau selama dua kali bahawa beliau tidak menulis surat berkenaan, maka bolehlah saya rujuk kepada surat akuan sumpah (D90) yang telah dibuat oleh beliau beberapa hari sebelum perjumpaan dengan saya.

He was then asked:

F Question : Did Ummi show you D90?

Answer : Ya.

His further evidence on this issue runs as follows:

Question : Did you have anything whatsoever to do with D90?

G Answer : Tidak sama sekali kerana semenjak surat disebar pada Ogos 1997, inilah kali pertama, iaitu 26 Jun 1998, saya berjumpa dengan dia.

Question : Did you use any influence or did you put any pressure on her to prepare D90 through Dato Sng?

H Answer : Again I would like to repeat that she is a compulsive liar.

Question : Did you or did you not?

Answer : Saya tidak mendesak Ummi.

Question : Adakah kamu mendesak Ummi melalui Dato Sng?

Answer : Saya tidak mendesak Ummi melalui sesiapa pun.

I Question : Do you know the lawyer who prepared D90?

Answer : Tidak.

Question : Did you accompany Ummi to whoever prepared this statutory declaration? A

Answer : Tidak.

In cross-examination, Azmin denied that his evidence relating to exh P14 and the fact that Ummi told him that she did not write it are not true. Nor Azman said that he drove Ummi to the office of lawyer Yeoh at her request. B She had wanted to appoint the lawyer as her solicitor. He did not know the purpose for which she appointed him. He did not see anybody pressurizing Ummi in the office of the lawyer. Nor did she appear to be pressurized. When learned counsel began to question Nor Azman on exh D90, I informed him that the line of questioning may infringe s 126 of the Evidence Act 1950 as Nor Azman was in the position of an agent of Ummi. In saying C that, I had in mind *Wheeler v Le Merchant* (1881) 17 Ch D 675 where Jessel MR said:

> ... The actual communication to the solicitor by the client is of course protected, and it is equally protected whether it is made by the client in person or is made by an agent on behalf of the client ... . D

Learned counsel merely said that s 126 does not apply as Nor Azman was not an agent or clerk of the solicitor. As he did not convince me that Nor Azman was not the agent of Ummi nor that any evidence that was sought to be elicited from the witness related to any communication made by him to the solicitor with regard to exh D90, I disallowed the line of questioning. E Ngui Kee Heong was the Commissioner for Oaths before whom exh D90 was affirmed by Ummi. On 23 June 1998, he went to the office of Dato Sng Chee Hua at the request of the secretary to the latter. When he arrived there, exh D90 was in the midst of being drafted by lawyer Yeoh Cheong Keng in Dato Sng Chee Hua's room. Ngui Kee Heong had to wait for about 20–30 minutes for it to be prepared. Ummi was also present there. Exhibit D90 F was then affirmed and attested. He said that Ummi signed it after she had read it and was satisfied. He said that she affirmed the exhibit willingly and voluntarily.

As I said in an earlier part of the judgment, the burden is on the defence to establish that exh D90, an exhibit tendered by the defence, was affirmed G voluntarily by Ummi in the light of her evidence that she was pressurized into affirming it. The first observation to be made on the evidence led by the defence is that the exhibit came into existence under very strange circumstances. It was executed in the office of Dato Sng Chee Hua. It was prepared by the solicitor, not in his office, but in the office of Dato Sng Chee Hua. Ngui Kee Heong was summoned there to attest it. This lends weight H to Ummi's evidence that she was pressurized to affirm the exhibit. The defence did not adduce any evidence of what transpired between Ummi and Dato Sng Chee Hua in the latter's office when exh D90 was affirmed. This is very significant as it is her contention that it was Dato Sng Chee Hua who communicated Azmin's pressure to her. Dato Sng Chee Hua is therefore a material witness who ought to have been called by the defence. If he had I been called, he would have thrown light on Ummi's allegations. However, he was not called as a witness even though the defence had accepted him

A when he was made available by the prosecution. The general rule is that s 114(g) of the Evidence Act 1950 does not operate against the defence but where there is an onus on it, as in this instance, to prove an issue, the presumption may be invoked (see *Baharom v PP* [1960] MLJ 249, *Choo Chang Teik & Anor v PP* [1991] 3 MLJ 423). I therefore hold that an adverse inference should be drawn against the defence for its failure to call B Dato Sng Chee Hua as its witness in order to prove the voluntariness of exh D90. The evidence of Ngui Kee Heong to the effect that Ummi affirmed the exhibit willingly and voluntarily does not carry much weight as he would not know what preceded her affirmation of the exhibit. The evidence of Azmin on this issue is in two parts. The first is his evidence of C what Ummi allegedly told him on 30 June 1998. This was not put to Ummi when she was being cross-examined neither was she re-called for that purpose. In such circumstances, the evidence of Dato Sng Chee Hua, if adduced, and found to be favourable, would have been of assistance to the defence. Thus, I am unable to give any weight to this part of the evidence of Azmin. The second is his evidence that he did not use any influence or D pressure on Ummi to prepare exh D90 through Dato Sng Chee Hua. As I said earlier, Dato Sng Chee Hua ought to have been called to explain this allegation as he was the one who was supposed to have conveyed it to Ummi. In view of the adverse inference that I have drawn against the defence for the failure to call him as a witness, I am unable to give any weight to this part of Azmin's evidence also. In the premises, it is my view E that the defence has not established, on a balance of probabilities, that exh D90 was affirmed by Ummi voluntarily.

Ummi had, when under cross-examination, denied that she had sent a letter to YAB Prime Minister prior to exh P14A, B and C. With regard to this alleged letter, the accused said in his evidence:

F

> P14 was the first time that Ummi made allegations against me. I was handed another letter of allegations. The allegations in that letter were shorter and milder. Part of the allegations was against Ummi's brother Azmin for him not helping her. I read that letter. It was handed to me by the PM. He told me to read it and to destroy it ... I brought the letter to my office, read it and, because Azmin is Ummi's brother, I confided in him. I asked him to shred the G letter after reading it. He told me that he had shredded it.

The accused's evidence does not show that the letter given to him by YAB Prime Minister was written by Ummi. In fact, he has clearly stated that exh P14 was the first time that Ummi had made allegations against him. However, in a later part of his evidence, he said:

H

> Prior to P14 in July 1997, I received a letter purportedly written by Ummi ... .

Despite the change in evidence, it remains as a letter 'purportedly' written by Ummi and not one actually written by her. It will therefore be observed that the accused has not said that the letter was written by Ummi. Learned counsel himself referred to it as being 'purportedly' written by Ummi when I he examined Azmin on the issue by asking:

> Are you aware of a letter purportedly written by Ummi to the Prime Minister in 1997?

There is therefore no justification for Azmin to say it is Ummi's letter when he said that it was her letter to YAB Prime Minister containing allegation against the accused. Thus, I find this part of Azmin's evidence to be not credible. In such circumstances, the failure by the prosecution to cross-examine him on this part of his evidence does not amount to an acceptance of it. Accordingly, I am unable to accept Azmin's evidence that it was Ummi's letter and hold that she did not write any letter to YAB Prime Minister prior to exh P14A, B and C.

The result is that Ummi's credit has not been affected in any way, particularly by the evidence of Azmin, on the issues under consideration.

(II) AZIZAN

Azizan said that he was pressured into affirming exh D55. I have set out in some detail his evidence on this issue in an earlier part of the judgment. He had testified that he was pressured into affirming the exhibit by Rahim King and MaAmin. I have ruled as irrelevant his complaint against Sukdev Singh. What requires scrutiny is the testimony of Azizan that he did not appoint Sukdev Singh as his solicitor for the preparation of exh D55 while the latter said otherwise. In my opinion, what appears to be a contradiction is not really so, bearing in mind the circumstances in which Sukdev Singh was appointed. I shall advert to this issue later. In an attempt to show that exh D55 was affirmed voluntarily, the defence called MaAmin, Sukdev Singh and Ngui Kee Heong. Rahim King was not called.

In his examination-in-chief, MaAmin said that Azizan and he were like brothers. In the first week of July 1998, Azizan asked him to follow him to the office of a lawyer. The lawyer is a sikh. He had followed Azizan to the lawyer's office only once. He had not met the lawyer prior to that. He followed Azizan into the lawyer's office. Azizan and the lawyer had a conversation and he did not give any instructions to the lawyer on behalf of Azizan. The accused did not at any time ask him to see or influence Azizan in any way. He also did not threaten Azizan. If this was the only evidence of MaAmin, I would have had little difficulty in rejecting Azizan's evidence on the circumstances in which he affirmed exh D55. But that was not to be. Contrary to his earlier evidence that he followed Azizan to the lawyer's office only once, MaAmin narrated another instance when he went to the lawyer's office in a later part of his examination-in-chief. Worse was to come. In cross-examination, he said that he had been to the lawyer's office three to four times. He then said that in early July 1998 Rahim King, a friend of his, asked him to come to Restaurant Tom Yam in Kuala Lumpur. There Rahim King introduced him to Azizan. That was the first time he met Azizan. MaAmin said that Rahim King gave him a small sum of money for keeping an eye on Azizan. After the meeting, the three of them went to the sikh lawyer's office. In the lawyer's office, Rahim King and Azizan conversed with the lawyer in English. With regard to the connection between the statutory declaration affirmed by Azizan and Rahim King, the cross-examination of MaAmin runs as follows:

A Question : Adakah kamu tahu bahawa En Rahim King ada menyuruh Azizan membuat satu surat akuan sumpah?

Answer : Tidak tahu.

Question : Saya mengatakan kepada kamu bahawa kamu tahu bahawa Rahim King ada menyuruh Azizan membuat satu surat akuan, betul atau tidak?

B Answer : Saya tidak tahu dan tidak pasti kerana saya melihat Azizan dan Rahim King bercakap sahaja.

Question : Selain daripada waktu itu, pada masa-masa yang lain, adakah kamu tahu Rahim King telah menyuruh Azizan membuat satu surat akuan sumpah?

C Answer : Tahu.

Question : Pada bila masa yang kamu tahu bahawa En Rahim King telah menyuruh En Azizan membuat satu surat akuan sumpah?

Answer : Tarikhnya saya sudah lupa. Tempatnya ialah di verandah rumah Rahim King. Itu pun mereka berdua sahaja yang bercerita. Yang saya melihat dari jarak sedikit daripada mereka berdua. Hanya D saya melihat Azizan memegang sekeping kertas dan mereka berbual di dalam Bahasa Inggeris. Saya juga tidak dapat dipastikan bahawa itu adalah surat yang dikatakan.

MaAmin was cross-examined on several telephone conversations between him and Rahim King. As a result of a telephone call from Rahim King at the E end of July 1998, MaAmin made several attempts to contact Azizan. He managed to contact Azizan in his office in Alor Gajah. Azizan seemed to know why MaAmin came to see him. Azizan was angry. MaAmin was not re-examined on most of the evidence he gave in cross-examination.

It is my view that Azizan became a client of Sukdev Singh through the introduction of Rahim King. This is evident from the fact that it was Rahim F King who took Azizan to the lawyer's office. MaAmin was aware that Rahim King had asked Azizan to prepare a statutory declaration though he was not sure whether the paper that Azizan was holding in Rahim King's house on a particular occasion was the document. The logical and reasonable inference to be drawn from these circumstances is that Rahim King was the G person behind the preparation of the statutory declaration and had asked Sukdev Singh to prepare it for Azizan. To that extent, Sukdev Singh is right when he said that Azizan was his client. Azizan is also right when he said that he did not appoint the solicitor in view of the fact that it was Rahim King who took him to the solicitor's office coupled with the fact that it was Rahim King who was behind the preparation of the statutory declaration. Be that H as it may, the evidence of MaAmin given in cross-examination synchronizes with the evidence of Azizan with regard to the pressure exerted on him by Rahim King and MaAmin to affirm exh D55. My first observation is that I do not accept MaAmin's evidence that he and Azizan were like brothers. MaAmin was keeping an eye on Azizan for a certain purpose. He was paid money by Rahim King to keep an eye on Azizan. This is not what brothers I do to each other. Thus, the evidence of MaAmin on the voluntariness of exh D55 is suspicious. It becomes clear when the circumsances in which it was prepared are considered. The key player behind the preparation of

exh D55 was Rahim King. He kept in touch with MaAmin to ensure that Azizan goes to the lawyer's office. He had a hand in the affirmation of the statutory declaration by Azizan. This is made evident by the connection between Rahim King and the statutory declaration as testified by MaAmin. In view of the material role played by Rahim King, the defence ought to have called him as a witness to explain the evidence of MaAmin. The failure to do so compels me to draw an adverse inference against the defence on the issue of establishing whether exh D55 was affirmed voluntarily. Ngui Kee Heong's evidence is of no assistance in making a ruling on this issue as he would not know the events that led to the affirmation of exh D55. In any event, the role played by Rahim King and MaAmin are consistent with the evidence of Azizan that he was pressured by them to affirm exh D55. In the circumstances, it is my finding that the defence has not established, on a balance of probabilities, that exh D55 was affirmed by Azizan voluntarily.

As I said in an earlier part of the judgment, exhs D55 and D90 were tendered in evidence by the defence in mysterious circumstances. That leads to an inquiry into the identification of the person who was behind the preparation of these exhibits. The evidence of Mohd Faiz reveals that he was acting for the accused in a defamation suit over the publication of *Buku 50 Dalil* at about the same time the exhibits were affirmed. Mohd Faiz had a meeting with Azizan and Sukdev Singh. Sukdev Singh is the solicitor who prepared exh D55. The inference to be drawn from these facts is that Mohd Faiz would have had an interest in a document like D55 in the preparation of the suit for his client, the accused. This must be read with the evidence of Azizan in cross-examination when he said:

> Rahim King dan MaAmin adalah kawan tertuduh dan bukan kawan saya.

And later:

> Saya telah dipaksa untuk menandatangani IDD54 setelah sering dihubungi oleh MaAmin, Rahim King kerana mereka adalah orang-orang suruhan tertuduh.

It is therefore clear that Rahim King and MaAmin were friends and 'orang-orang suruhan' of the accused. The further inference to be drawn from the circumstances of the case, that is to say, that the accused was preparing a defamation suit in respect of *Buku 50 Dalil*; that *Buku 50 Dalil* contained a reproduction of exhs P14B and C; that Rahim King and MaAmin were friends and 'orang-orang suruhan' of the accused; the part played by Rahim King and MaAmin in getting Azizan to affirm exh D55; that Mohd Faiz was acting for the accused in the defamation suit and that he had a meeting with Azizan and Sukdev Singh and the fact that the originals of exhs D55 and D90 were in the possession of the defence, is that the person who wanted the statutory declarations was none other than the accused himself for use in the defamation suit. This finding is necessary in order to determine whether it was the accused who wanted to see Azizan or whether it was the other way round when they had a conversation on *Buku 50 Dalil* in June 1998.

Azizan said that it was the accused who wanted to see him through ASP Zull Aznam in June 1998. The accused said that it was Azizan who wanted

A to see him. The defence sought to support this part of the evidence of the accused through ASP Zull Aznam, Mohamed bin Ahmad and Abdullah Sani bin Said ('Abdullah Sani'). With regard to the supporting evidence of ASP Zull Aznam on this issue, the answer of what was put to Azizan in cross-examination is this:

B > Saya tidak bersetuju bahawa sebenarnya sayalah yang menghubungi ASP Zull Aznam kerana saya hendak berjumpa tertuduh berkenaan satu hal peribadi.

ASP Zull Aznam said that in June 1998 he was informed by Abdullah Sani that Azizan had contacted him to get an appointment to see the accused. ASP Zull Aznam conveyed this message to the accused who reluctantly C agreed to see Azizan. When asked whether Azizan came to see the accused, ASP Zull Aznam said:

> Setelah dipersetujui oleh Dato' Seri Anwar, saya telah meminta Abdullah Sani untuk menghubungi Azizan dan seterusnya menetapkan tarikh, waktu dan tempat pertemuan tersebut.

D This shows that there is a shift from what was put to Azizan which was that it was Azizan who contacted ASP Zull Aznam. On the other hand, ASP Zull Aznam said that Azizan approached him through Abdullah Sani and that he had told Abdullah Sani to contact Azizan after the accused had agreed to see him. What Abdullah Sani said on this issue is of interest and it is this:

E > Dalam bulan Jun 1998, Azizan ada menghubungi saya melalui telefon. Dia memberitahu saya bahawa dia hendak berjumpa dengan Dato' Seri Anwar. Azizan menelefon saya di rumah saya. Azizan berkata dia hendak berjumpa dengan Dato' Seri. Azizan berkata dia ada masalah sedikit. Dia tidak memberitahu masalahnya. Azizan menelefon saya kerana dia kenal dengan saya. Saya menyuruh Azizan menghubungi Zull Aznam. Saya tidak tahu sama F ada Azizan ada menghubungi Zull Aznam. Saya ada memberitahu ASP Zull Aznam berkenaan dengan permintaan Azizan. Saya tidak tahu sama ada Azizan ada datang berjumpa dengan Dato' Seri selepas itu.

Thus, after Abdullah Sani had informed ASP Zull Aznam about the request of Azizan to meet the accused, he did not know what happened thereafter. G His evidence does not show that ASP Zull Aznam asked him to contact Azizan after the accused had agreed to see him. This contradicts the evidence of ASP Zull Aznam. With regard to the evidence of Mohamed bin Ahmad, Azizan had agreed in cross-examination by the defence that he had met this person in relation to a contract for one of his friends. The testimony of Mohamed bin Ahmad that Azizan had told him that he wanted to see the H accused at that meeting was not put to Azizan in his cross-examination. Mohamed bin Ahmad's evidence therefore loses its value. In the circumstances, I am unable to accept the evidence of these supporting witnesses by virtue of matters not being put to them and the contradictions amongst themselves. I am also unable to accept the accused's evidence on this issue. He said in his evidence that Azizan contacted ASP Zull Aznam I and Abdullah Sani to see him on some business matters. When he agreed to meet Azizan, he had made it clear that there should be no discussion on business matters. If no business matters could be discussed I am unable to

comprehend why the accused agreed to see him given the allegations made by Azizan against him. It must be remembered that at that point of time, the allegations made in 1997 had re-surfaced as part of *Buku 50 Dalil*. Reports had been made on the book. Upon a consideration of the timing of the meeting between Azizan and the accused, the unsatisfactory evidence of the supporting witnesses on this issue and the circumstances of the case, it is my firm finding of fact that it was the accused who wanted to meet Azizan. With regard to the meeting between the accused and Azizan on 18 August 1997, it is also my finding that it was the accused who wanted to see Azizan. My finding is based on the circumstances of the case and two other reasons. Firstly, Azizan would not have volunteered to see the accused in view of his mental and physical condition at that time. Secondly, if in fact the conversation that took place at the meeting was as described by the accused, I do not see why Azizan should write exh P17 just prior to the meeting with such great reluctance.

The result is that the credibility of Azizan has not been affected by the defence evidence that I have referred to.

WHETHER THE PROSECUTION HAS PROVED ITS CASE AGAINST THE ACCUSED BEYOND REASONABLE DOUBT ON ALL THE EVIDENCE ADDUCED

I shall approach this part of the judgment on the same basis that I did at the close of the case for the prosecution by specific reference to the ingredients to be proved.

(A) MEMBER OF THE ADMINISTRATION

The prima facie evidence adduced by the prosecution to show that the accused was a Member of the administration, to wit, Deputy Prime Minister and Minister of Finance at the material time was not disputed by the defence. As a matter of fact the accused himself said in his evidence that he was the Minister of Finance from 1991 and Deputy Prime Minister from 1993 and that he held both the posts till his dismissal on 2 September 1998.

Thus, the prosecution has proved beyond reasonable doubt that the accused was Deputy Prime Minister and Minister of Finance and, thus, a Member of the administration at the material time within the meaning of s 2(2) of Ordinance No 22.

(B) WHILE BEING SUCH MEMBER COMMITS A CORRUPT PRACTICE

As I said earlier, this ingredient involves proof of two elements by the prosecution. They are:

(i) the manner in which the accused used his position, and

(ii) the advantage that he obtained.

As I have referred to the evidence adduced at the end of the case for the prosecution with regard to this ingredient earlier, I do not think it necessary to reproduce it here. I shall now consider the evidence adduced by the defence so as to decide, on the whole of the evidence, whether the prosecution has proved this ingredient beyond reasonable doubt. I shall do so by reference to the two elements separately.

(I) THE MANNER IN WHICH THE ACCUSED USED HIS POSITION

As I did at the close of the case for the prosecution, I shall consider the evidence relating to the manner in which the accused used his position in relation to all four charges together under the following sub-headings:

Whether Azizan and Ummi made the allegations against the accused

The accused, in his evidence, did not challenge the fact that the allegations in exh P14B and C were made by Ummi and Azizan. He said that exh P14 was the first time that Ummi had made allegations against him. He said that when exh P16 was lodged, there was no suggestion by him nor Dato Mohd Said or Dato Amir Junus for the arrest of Ummi and Azizan. When they were arrested, the accused was concerned that they should not be detained for long. He said that he also told Dato Mohd Said and Dato Amir Junus to 'gempar' Ummi and Azizan 'sikit-sikit cukuplah'. On 17 August 1997, Dato Mohd Said and Dato Amir Junus informed the accused of the arrest of Ummi and Azizan. On the following night, the accused was informed by Dato Mohd Said and Dato Amir Junus:

> ... that Azizan had regretted what he did, retracted the letter and wanted to apologize. Ummi, on the other hand, although she had also retracted the letter but did not suggest or propose to see me.

On the night of 18 August 1997, Dato Mohd Said and Dato Amir Junus handed over exhs P17 and P18, the written statements of Ummi and Azizan, to the accused. By 27 August 1997, exh P14A, B and C had become public knowledge. On that day, Dato Mohd Said and Dato Amir Junus came to see him. As he said:

> They considered several options, that is, either to suggest that Azizan and Ummi speak directly to the media or come up with a public statement. I had to remind them that because of the Prime Minister's suggestion that I should completely ignore the issue of the allegations, so I had to leave it to PW1 and PW11.

On 29 August 1997, exhs P20 and P22, the public statements of Ummi and Azizan, and exh P21, the covering letter of Ummi, were handed to the accused. Azmin said that these letters were handed to him by the accused to affix the Received Rubber Stamp on them. I pause to add that the accused did not say in his evidence that the allegations were not made by Ummi and Azizan. Thus, his own evidence shows that he has accepted the

fact that exh P14B and C were allegations made by Ummi and Azizan respectively. The fact that Azizan signed exh P14C was not challenged by the defence in its case. My finding that exhs D55 and D90 were not voluntarily affirmed precludes me from giving any weight to these exhibits. Thus, they do not affect the evidence of Ummi and Azizan on exh P14B and C in any way. I must add that on the evidence adduced, particularly the unchallenged evidence of Ummi on exhs P38A–V and P35, there can be no dispute that the draft for exh P14A, B and C were not prepared by Dato Seri Megat Junid but by none other than Ummi herself.

Be that as it may, the defence attempted to lead another line of evidence through Azmin to show that exh P14 was not written by Ummi. This is what Azmin said in answer to questions:

Question : What did Ummi tell you on 26 June 1998 about P14?

Answer : Pada 26 Jun 1998, Ummi memberitahu saya bahawa beliau tidak menulis surat berkenaan.

Question : Where did she utter these words?

Answer Di rumah abang saya, Mohd Azman.

Question : That was the first time she brought this to your attention?

Answer : Ya.

Question : Did you have a subsequent meeting with her?

Answer : Saya bertemu dengan Ummi sekali lagi pada 30 Jun 1998 jam 1.20 petang.

Question : Where did you meet her?

Answer : Di pejabat Dato Sng Chee Hua.

Question : Did she repeat what she told you earlier?

Answer : Dalam pertemuan berkenaan, Ummi sekali lagi menegaskan bahawa beliau tidak menulis surat berkenaan.

Question : How did she come about saying this a second time?

Answer : Walaupun Ummi telah memberi pengakuan bahawa beliau tidak menulis surat berkenaan pada 26 Jun 1998, saya terpaksa bertanya beliau sekali lagi kerana saya mengenali beliau yang selalu berbohong semasa bercakap.

Question : What did you ask her to prompt her to come up with this statement?

Answer : Saya bertanya kepada Ummi mengapa beliau sanggup melemparkan fitnah yang kejam terhadap saya dan keluarga serta Saudara Anwar sedemikian, beliau sendiri tahu bahawa tuduhan-tuduhannya tidak berasas dan boleh meruntuhkan rumahtangga.

Question : What was her reply?

Answer : Beliau sekali lagi menegaskan beliau tidak menulis surat itu. Maka saya bertanya kepada beliau kalau beliau tidak menulis surat ini apakah peranannya? Pada saat ini, Ummi menjawab that she was promised money and projects to fabricate evidence. ...

Question : As regards P14, did Ummi tell you who drafted that letter?

Answer : Ummi memberitahu saya bahawa surat berkenaan didrafkan oleh Dato Megat Junid. Beliau juga memberitahu saya sekiranya saya

A bercadang untuk mengambil tindakan undang-undang, saya patut mengambil tindakan terhadap Dato Megat Junid kerana beliau adalah dalang di belakang surat berkenaan.

If the object of the defence is to show, by the introduction of this evidence, that Ummi is not the writer of exh P14A, B and C, then it is inconsistent B with the evidence of the accused. In any event, I shall consider the value of this evidence. The first observation to be made is that the conversation between Azmin and Ummi that allegedly took place on 26 June 1998 and 30 June 1998 ought to have been put to Ummi in her cross-examination. She was questioned about the meeting between her and Azmin on 26 June 1998. But it was not put to her that she did not write exh P14A, B and C as C now testified by Azmin. Instead, she said that at that meeting she was asked to deny her allegations. No reference was made to her about the meeting of 30 June 1998. As the conversation that allegedly took place on both the dates regarding exh P14A, B and C was not put to Ummi when she gave evidence, she ought to have been recalled by the defence for that purpose. In the circumsances, the alleged conversation as described by Azmin D becomes inadmissible on the principles laid down in *Awadh v State of MP* AIR 1956 SC 788. In any event, it becomes suspicious when viewed against the background of the evidence of the accused himself on this issue and the prosecution evidence which I have considered earlier showing that the allegations in exh P14B were made by Ummi. It is therefore clear that the evidence of Azmin that Ummi told him that she did not write exh P14A, B E and C is a recent invention.

The defence submission that there is serious doubt that exh P14B was prepared by Ummi as she did not sign it and that exh P14A though signed, is only a covering letter, has no merit. A proper reading of exh P14A will reveal that it refers to, inter alia, exh P14B as being the report of Ummi. F Thus, there is no necessity for the report to be signed as it is an enclosure to a signed letter. The report therefore becomes that of Ummi's. With regard to exh P14C, the defence contended that the signature on it ought to have been verified by a document examiner to confirm the signature. In my opinion, it is not necessary to do so. Verification by a document examiner is one mode of proving the signature. The best method of proving a signature G on a document is by evidence of the person whose signature it is who had affixed the signature on it. Azizan has confirmed that the signature on exh P14C is his. That evidence was not challenged. Thus, there is no onus on the prosecution to look for other modes of proof.

It is therefore my finding that the defence has not raised any reasonable H doubt, on the whole of the evidence adduced, that Ummi and Azizan made the allegations. I therefore hold that this element has been proved beyond reasonable doubt.

Whether the accused directed Dato Mohd Said and Dato Amir Junus to obtain I from Ummi and Azizan written statements addressed to YAB Prime Minister and public statements denying the allegations on the dat prescribed in the charges and that they obtained the statements as directed

The central theme of the defence case is that the accused only asked Dato

Mohd Said and Dato Amir Junus to investigate into the allegations thoroughly and fully and that the written statements and public statements were obtained by them on their own. I shall now refer to the various features of the evidence adduced by the defence in order to determine, on the whole of the evidence adduced, whether they have raised a reasonable doubt in the prosecution case that the accused had directed Dato Mohd Said and Dato Amir Junus to obtain the statements which were obtained as directed.

I shall first consider the manner in which the accused came to know about exh P14A, B and C, the circumstances in which he first met Dato Mohd Said alone regarding this matter and later together with Dato Amir Junus. This is significant as it is these initial meetings that set the train of events in motion. A proper appreciation of these facts will throw light on the interest shown by the accused in the allegations against him from the very beginning. The accused said in his evidence that he met Dato Mohd Said alone after a scheduled meeting at his office on the morning of 11 August 1997 at his request. As the accused said:

> It was an official meeting. In this meeting, PW1 came alone. After the briefing, I asked him to stay back and enquired from him whether he was aware of P14. At that time, I had been told of P14 but had not seen it.

Dato Mohd Said said that he was aware and that he will find out about it and give a briefing later. He informed the accused that he would bring along Dato Amir Junus with him. That is what the accused said in his examination-in-chief. In cross-examination, he said:

> Semasa pertemuan saya dengan SP1 pada 11 Ogos 1997, saya bukanlah yang berbangkitkan isu P14.

This is what he said in his re-examination:

> When I said in cross-examination 'semasa pertemuan saya dengan SP1 pada 11 Ogos 1997 bukan saya mula bangkitkan isu P14' what I meant was, firstly, the meeting on 11 August 1997 with SP1 and SP11 was after I received a call from the IGP informing me about P14 and requesting SP1 and SP11 to see me in order to brief me. Secondly, because the visit of SP1 and SP11 was pre-arranged they immediately intimated to me about P14 on IGP's instructions (counsel reminds witness that he is referring to the meeting on the 11th morning and the question is confined to SP1 only). What I said just now refers to the meeting at night on 11 August 1997. On the morning of 11 August 1997, I met SP1 alone after the other officers left. SP11 was not there at that time. ... SP1 stayed back after the official meeting for a private chat. But I did not bring up the issue of P14 because at that time I was unaware of it. P14 was intimated to me only later by the IGP who received the letter from Dato Megat Junid. The IGP intimated about P14 to me on the night of 11 August 1997. That was when he suggested that SP1 and SP11 meet me in order to give a briefing. ... SP1 and SP11 were asked by the IGP to come and brief me.

He has confirmed, after having been brought back from confusion by his counsel, that he did not raise the issue of exh P14A, B and C with Dato Mohd Said and that the IGP had asked Dato Mohd Said and Dato Amir Junus to brief him. This conflicts with what he said in his examination-in-chief. There are therefore internal inconsistencies within the evidence of the

accused on the way he met Dato Mohd Said alone in the morning of the 11th; the conversation he had with Dato Mohd Said regarding exh P14A, B and C at that meeting; the circumstances in which he first came to know of exh P14A, B and C and the manner in which he met Dato Mohd Said and Dato Amir Junus at the next meeting, that is to say, that it was the IGP who had asked them to meet him to give a briefing. It is the case for the prosecution that on the 11th morning, the accused asked Dato Mohd Said to look into a letter containing wild allegations against him. Then Dato Mohd Said and Dato Amir Junus met the accused at his Official Residence the next day upon Dato Amir Junus being informed by ASP Zull Aznam that the accused wanted to meet them. The accused's evidence was not put in cross-examination to Dato Mohd Said or Dato Amir Junus. The weight of the evidence of the accused therefore suffers as a result of the internal inconsistencies in his evidence and such evidence not having been put to Dato Mohd Said and Dato Amir Junus in their cross-examination by the defence. Further defence evidence suggests that the matter goes beyond weight. ASP Zull Aznam was asked this question in cross-examination:

> Pada 12 August 1997 lebih kurang 8 malam, kamu ada membuat panggilan telefon kepada Dato Amir untuk menyampaikan pesan bahawa Dato' Seri Anwar ingin bertemu dengan Dato Amir dan Dato Mohd Said di kediaman rasmi Dato' Seri pada malam itu?

And he replied:

> Ya.

He was then asked:

> Kamu membuat panggilan telefon itu atas arahan Dato' Seri, bukan?

And he replied:

> Ya.

Thus I find that it was the accused who wanted to see Dato Mohd Said and Dato Amir Junus on the 12th and it was not they who wanted to see him on the instructions of the IGP as now claimed by him in his testimony. The evidence of the accused himself in another part of his examination-in-chief with regard to the meeting on the 12th supports my finding. This is what he said:

> The next meeting I had with the Special Branch was on the evening of that day or the following evening. At that meeting, PW1 and PW11 informed me that the IGP had already received P14 from Dato Seri Megat Junid.

The fact that Dato Mohd Said and Dato Amir Junus met the accused on his instructions and the further fact that they informed him that the IGP had already received exh P14 A, B and C mean that the accused had no prior communication with the IGP as claimed by him. It is therefore my finding that the sequence of events that happened on the 11th and up to the meeting of the 12th is as stated by the prosecution witnesses and the version as described by the accused is an after-thought to embroider his defence. This

shows that the accused was concerned about the allegations from the very beginning.

The circumstances under which the accused lodged the police report (exh P16) on exh P15 through ASP Zull Aznam is significant to determine the state of mind of the accused at that time. The prosecution evidence is that when Dato Mohd Said and Dato Amir Junus met the accused on 15 August 1997 at about 2 pm, he showed them exh P15. They advised him to make a police report. He did not agree initially. Dato Mohd Said had agreed with a defence suggestion that the accused did not want to make a report initially because of the adverse publicity as he is a politician and Deputy Prime Minister. It was for this reason, as shown by the unchallenged prosecution evidence, that he did not want the case to be investigated by the CID. That he had a hand in the branch of the police that ought to investigate the matter is supported by the fact that when he met Dato Mohd Said and Dato Amir Junus on 12 August 1997, he had not decided on that matter yet. As he said in examination-in-chief:

> At that time, I did not decide which branch of the police would conduct investigations.

It is therefore clear that the accused did not want the matter to be investigated by the CID. When he was asked in cross-examination whether on 15 August 1997 he had told Dato Mohd Said and Dato Amir Junus that if the matter is investigated by the CID, it should not be brought to court, he said:

> Saya juga akui saya tidak cenderung pada ketika itu untuk membawa perkara itu ke mahkamah kerana Special Branch baru memulakan siasatan.

When further cross-examined that he did not want the case to be brought to court as he was worried about the publicity that it may bring against him, the accused said:

> Saya tidak setuju bahawa, pertama, saya sendiri yang membuat laporan polis melalui Zull Aznam, kedua, saya bersetuju dengan Peguam Negara bila beliau mencadangkan kepada saya untuk mengambil tindakan terhadap orang-orang yang berkenaan. Pada masa itu, Perdana Menteri tidak bersetuju. Jadi, tidak benar saya khuatir publicity mengenai kes ini sekiranya dibawa ke mahkamah.

Thus, what the accused says, by these two answers, is that he was not inclined that the matter must be brought to court though he was not worried about the publicity for the reasons given by him. The claim that he was not worried about the publicity because he himself had made the report loses value in view of his own testimony in examination-in-chief that initially he did not agree to make a report and that he only agreed finally upon being persuaded. His reference to the Honourable Attorney General is an attempt to cloud the issues as the latter was nowhere in the picture at that time. The reasons given by the accused therefore do not support his answer to the question as put by the prosecution. The unchallenged prosecution evidence that he did not want the matter to be investigated by the CID and his admission that he was not inclined that it be brought to court support the inference that he was concerned about the attendant publicity. In any event,

his evidence that he was not worried about the publicity is a departure from what was put to and agreed by Dato Mohd Said in his cross-examination. Thus, I am unable to give any weight to this part of the evidence of the accused and hold that he did not want to make a report initially because of the adverse publicity by virtue of his position. My finding on the reasons why the accused did not want to lodge a police report initially coupled with the fact that he did not want the matter to be investigated by the CID further show that he was very concerned about the allegations. The role he played in deciding on the branch of the police that should conduct the investigations militates against his stand that he had merely asked the police to investigate and had left it to them to do what was right and proper.

The next matter for consideration is the manner in which the meetings between Dato Mohd Said and Dato Amir Junus and the accused were arranged. If they were arranged by Dato Mohd Said and Dato Amir Junus, it would show their concern over the matter as testified by the accused. If they were arranged by the accused then it will indicate the concern and interest of the accused in the investigation. It is the case for the prosecution that it was the accused who contacted Dato Mohd Said and Dato Amir Junus regularly. Their line of cross-examination when they gave evidence also shows that the defence case as put was that the accused had contacted them regularly to brief him on the progress of the investigation. On this issue, the accused said in his evidence:

> There were occasions when I invited them to come but on many occasions PW11 would call ASP Zull Aznam.

The accused is trying to suggest that many of the appointments to see him were at the behest of Dato Amir Junus. I have already referred to the appointment ASP Zull Aznam made for the meeting of the 12th. As to the meeting on the 13th the accused, in answer to a question in cross-examination, said:

> Tidak benar bahawa SP1 and SP11 diarah oleh saya. Mereka datang ke rumah rasmi saya untuk memaklumkan kemajuan siasatan berdasarkan arahan Ketua Polis Negara kepada mereka sebelumnya.

Thus, his evidence is that he did not call for Dato Mohd Said and Dato Amir Junus for the meeting on 13 August 1997. With regard to this and subsequent meetings, ASP Zull Aznam said in answer to questions in cross-examinaiton:

> Question : Betul atau tidak bahawa sekali lagi pada 13 Ogos 1997 kamu ada membuat panggilan telefon kepada Dato Mohd Said Awang menyampaikan pesan Dato' Seri Anwar yang Dato' Seri Anwar ingin bertemu dengan Dato Said Awang dan Dato Amir di kediaman rasmi Dato' Seri Anwar, bukan?
>
> Answer : Ya.
>
> Question : Tarikh-tarikh lain di mana kamu menelefon PW1 dan PW11 atas arahan Dato' Seri kamu tidak ingat?
>
> Answer : Betul.

As the accused's testimony does not accord with what was put by the defence to the prosecution witnesses, it loses weight. I accept the evidence of ASP Zull Aznam as it is consistent with what was put by the defence to the prosecution witnesses on this issue. It is therefore my finding that it was the accused who contacted Dato Mohd Said and Dato Amir Junus regularly, through ASP Zull Aznam, in respect of the meetings that they had. This indicates his concern and interest in the progress of the investigations.

The method of interrogation used by the Special Branch officers on Ummi and Azizan is what is referred to as the Turning Over and Neutralization Operation. The object of the operation is to change the stand of a person on a certain view held by him. This was the first time that the operation had been conducted in a case of this nature. It was successfully employed to neutralize Ummi and Azizan. If that was done without any request from the accused, it would support the defence case that he did not ask for a denial and retraction of the allegations. The prosecution case is that this method was used in order to comply with the instructions of the accused. A finding on this issue will help to decide whether the accused had merely asked for a thorough investigation. I will now deal with the relevant evidence.

Firstly, exhs P17 and P18 were obtained within 24 hours of the arrest of Ummi and Azizan. The prosecution evidence on this was not challenged by the defence. When ACP Mazlan and DSP Aziz received instructions from Dato Mohd Said and Dato Amir Junus, they were told that they should make Ummi and Azizan withdraw and deny their allegations within 24 hours. Dato Mohd Said and Dato Amir Junus did not give this instruction on their own initiative. It originated from the accused himself. This was stated by Dato Amir Junus when he was cross-examined by the defence. This is what he said:

> Question : Are you seriously suggesting that accused asked you turn over and neutralize Ummi and Azizan?
>
> Answer : Apa yang tertuduh menyuruh Special Branch buat terhadap Ummi dan Azizan adalah untuk mereka menarik balik dan menafikan semua dakwaan-dakwaan terhadap tertuduh. Untuk mencapaikan hasrat itu, Special Branch telah menggunakan teknik turning over dan neutralization sebab masa yang diberikan hanya 24 jam sahaja.

Dato Amir Junus was not subjected to any further cross-examination on this part of his answer so as to neutralize this evidence. Neither did the accused deny or explain it away when he gave evidence. Thus, it is my finding that the accused asked for the retractions and denials to be made within 24 hours.

Secondly, the prosecution evidence that the accused asked Dato Mohd Said and Dato Amir Junus to trace Ummi and Azizan quickly was not challenged in the course of the case for the prosecution. Though the accused did not say anything about this in his examination-in-chief, he denied that he gave such instructions in his cross-examination. By reason of the failure

of the defence to cross-examine the prosecution witnesses on this issue, the denial on the issue by the accused loses weight. Taking into account the fact that the accused wanted the retractions and denials within 24 hours, I am unable to accept this denial by the accused. It is thus my finding that the accused asked Dato Mohd Said and Dato Amir Junus to trace Ummi and Azizan quickly.

Thirdly, the prosecution case is that on 13 August 1997, the accused asked Dato Mohd Said and Dato Amir Junus to 'gempar' Ummi and Azizan. As I said earlier, the defence challenge on this was only as to the meaning of the word 'gempar'. However, what the accused said in his evidence is that he said 'gempar sikit-sikit cukuplah'. Thus the accused has admitted that he asked for Ummi and Azizan to be 'gempar' though 'sikit-sikit cukuplah'. The degree of the 'gempar' to be used as stated by the accused was not put to Dato Mohd Said and Dato Amir Junus in their cross-examination. This brings into question whether the accused really qualified the degree of 'gempar' to be used. My first observation is that the fact remains that the accused asked for Ummi and Azizan to be 'gempar'. Whether it is 'sikit-sikit cukuplah' or not really does not alter the intention with which the instruction was given. However, based on the totality of the evidence adduced and particularly having regard to the defence challenge being only on the meaning of the word, it is my finding that the accused used the word 'gempar' without any qualification.

Fourthly, it is the case for the prosecution that the accused did not want Ummi and Azizan to be detained for long. He admitted in his evidence that he told this to Dato Mohd Said and Dato Amir Junus. His initial explanation for giving this instruction was because he knew them. Later, he said that he gave this instruction because he did not want them to be bullied. Though the reasons advanced are contradictory, the fact remains that the accused did tell Dato Mohd Said and Dato Amir Junus not to detain Ummi and Azizan for long. It must also be noted that the defence did not challenge the prosecution evidence on this. Neither were the reasons now offered by the accused put to the prosecution witnesses. It is therefore my view that the explanation now advanced is an after-thought meant to project the impression that the accused did not have any unlawful motive in giving the instruction. In an effort to support this projection, the accused said in his cross-examination that when asked for Ummi and Azizan not to be detained for long, Dato Mohd Said and Dato Amir Junus had told him:

> Dato Seri baik hati sangat. Orang fitnah macam itu pun masih kasihan lagi.

When challenged that this was never stated by them, he said:

> Ada mereka sebut. Pada masa itu, mereka menunjukkan simpati yang amat sangat kepada saya.

The accused, in his re-examination, was asked why this piece of evidence was not brought up when Dato Mohd Said and Dato Amir Junus gave evidence. The object of learned counsel in pursuing this line of questioning was obviously to ascertain why it was not put to the witnesses in their cross-examination so as to avoid any allegation of recent invention. The accused

said that he did not bring it up earlier as he thought it would be only relevant to clarify matters if and when asked. To a further question as to whether he informed his counsel about this, this is what he said:

> I informed my counsel about this after the evidence of SP1 and SP11.

Both the witnesses were not recalled by the defence in the course of the case for the prosecution to confront them with this piece of conversation so as to ascertain whether they uttered the words. But when these two witnesses were recalled by the defence in the course of its case, the words alleged to have been said by them were not put to them. In view of the challenge made by the prosecution that the words were not uttered by the witnesses, the fact that it was not put to Dato Mohd Said and Dato Amir Junus despite the claim by the accused that he had informed his counsel about it, I am compelled to conclude that the words were not uttered by them and that it is an after-thought in order to embellish the defence.

My findings that the accused asked Dato Mohd Said and Dato Amir Junus to trace Ummi and Azizan early, to 'gempar' them, not to detain them for long and to make Ummi and Azizan retract their allegations within 24 hours show that the neutralization of Ummi and Azizan was done by the Special Branch in order to comply with the instructions of the accused. It is totally inconsistent as a follow-up by the Special Branch to a mere request for a thorough investigation into the matter. I must immediately state that there is no evidence to even suggest that the accused asked for this method to be used. But it was a method used by the Special Branch so as to achieve the result expected. The matters that I have considered thusfar point to the inference that the accused was actively involved in the investigation from the very beginning to make Ummi and Azizan retract their allegation as he was very concerned. The resultant matter for consideration is whether there is positive evidence to show that he had asked for the written statements and the public statements.

In an attempt to show that the request for the letters did not come from him, the accused said:

> The idea of getting the retraction letters from Ummi and Azizan must be either from SP1 and SP11 or the police. But it was not from me. They just informed me and showed me the letters.

This answer is in direct contradiction to what was put to Dato Amir Junus under cross-examination. It is this:

> I put it to you that only after the Special Branch briefed the accused and said that they have investigated and found the allegations to be untrue and that it involved a political conspiracy against him, and Ummi and Azizan were prepared to retract their allegations, that the accused requested for the retraction.

Thus, the defence case as put in the course of the case for the prosecution is that the accused did in fact ask for the retractions. There is therefore a shift in the defence evidence on this issue from what was put in the course of the prosecution case. There was a further shift in another part of the

A accused's evidence when he said with reference to exhs P20 and P22, that when Dato Mohd Said and Dato Amir Junus met him on 27 August 1997, they:

> ... considered several options, that is, either to suggest that Azizan and Ummi speak directly to the media or come up with a public statement. I had to remind them that because of the Prime Minister's suggestion that I should completely ignore the issue of the allegations, so I had to leave it to PW1 and PW11.

B

Not only was this version not put to Dato Mohd Said and Dato Amir Junus in their cross-examination but it is also inconsistent with the accused's earlier evidence that they merely informed him and showed him the public statements.

C

Be that as it may, a consideration of the prosecution evidence that the accused asked for the public statements to be posted to his office will shed light on this issue. If the accused had asked for the public statements to be posted to him, it would obviously mean that he had some prior communication about them with Dato Mohd Said and Dato Amir Junus. This is what Dato Mohd Said said with regard to this request:

D

> He wants the letters to be open letters without being addressed to anybody. It was to be an open letter. He wanted the letter to be posted to the Deputy Prime Minister's office.

E In his cross-examination on this, he said:

> Question : I am instructed that the accused never requested that ID19 to ID22 be posted to his office.
>
> Answer : The instruction to me was that they should be posted to the Deputy Prime Minister's office.

F

A similar answer was given by Dato Amir Junus in his examination-in-chief and when challenged in cross-examination he denied that the accused did not ask for it to be posted. Dato Amir Junus has noted this request in exh P47. It will therefore be observed that the request for the letters to be posted to the office of the accused was a live issue in the course of the case for the prosecution. The defence had disputed the fact that the accused had asked for the letters to be posted to his office at that stage. However, the accused did not give any evidence on this issue. What now requires determination is whether the accused had in fact made such a request. Dato Amir Junus testified that he handed over exhs P20, P21 and P22 to the accused in a sealed envelope addressed to him and with the postal stamp on it cancelled. The letters were later found to have the Received Rubber Stamp of the accused's office. It is of interest to note that the accused did not attempt to explain the presence of the Received Rubber Stamp on the letters when he gave evidence. Azmin was cross-examined on this issue by the prosecution in the following manner:

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H

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> Question : (Sila lihat P20, P21 dan P22.) Kamu ada terima surat-surat ini daripada tertuduh?
>
> Answer : Ada terima.

Question : (Lihat pada chop di ketiga-tiga ekshibit ini.) Adakah kamu yang meletakkan chop pada ketiga ekshibit ini? A

Answer : Saya yang meletakkan chop-chop ini.

Question : Bersetuju atau tidak bahawa P20, P21 dan P22 telah disampaikan kepada kamu oleh Dato' Seri Anwar untuk dichopkan tarikh penerimaannya? B

Answer : Ya.

Azmin was not re-examined on this. It is therefore true that the accused received exhs P20, P21 and P22 as described by Dato Amir Junus. The accused had handed them to Azmin to affix the Received Rubber Stamp, obviously, to give the impression that they were received through the post. C The inference to be drawn from this is that the accused, as testified by Dato Mohd Said and Dato Amir Junus, had asked for the letters to be posted to his office. This finding is cemented by the fact that the accused did not give any evidence denying that he had asked for the letters to be posted to him although he had specifically put to the prosecution witnesses that he had not asked them to do so. It must be noted that a suggestion does not become D evidence unless it is supported by affirmative testimony. There was no such evidence. It is also not necessary for the request, being an admission made by the accused, to have been put to him by the prosecution (see *Biswanath Prasad v Dwarka Prasad* AIR 1974 SC 117). The failure by the accused to give evidence on this issue therefore means that he has accepted the E prosecution evidence on it. It is thus my firm finding that the accused had asked for the public statements to be posted to his office. The fact that the accused asked for them to be posted to him means that there was some prior communication between him and Dato Mohd Said and Dato Amir Junus regarding these letters.

This inference will have added weight if the accused, as contended by F the prosecution, had asked for corrections to be made to the public statements. The evidence of Dato Amir Junus on the corrections made to the public statement of Azizan and exh P29 by the accused, which I have outlined earlier, was challenged by the defence. The accused in denying that he made any corrections to the public statements, said:

G

> On the night of the 28th, I did not have any telephone conversation with PW11. I did not suggest any amendments to P29 because P29 is a very good statement. Why should I amend it further? Somebody else must have asked him to amend it. He did not discuss this with me on the phone.

The corrections were not made by Azizan and Ummi as they themselves H were unhappy with the amendments. The accused has denied that he made the corrections to exh P29 and, in support, has said that it is a very good statement and does not require any amendment. The explanation offered by the accused requires a comparison of exh P29 with exh P22. In particular, I refer to the statement in exh P29 which says:

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> Saya ingin menafikan sekeras-kerasnya bahawa saya terbabit dalam penerbitan surat-surat layang yang timbul selepas tarikh 5 Ogos 1997.

A This is merely a denial by Ummi that she was involved in the publication of any poison pen letters after 5 August 1997. There is therefore no denial that she wrote exh P14A, B and C. On the other hand, the relevant part of exh P22 is worded this way:

> Saya ingin menafikan sekeras-kerasnya bahawa surat-surat yang diedarkan yang kononnya ditandatangani oleh saya bukanlah surat saya kepada YAB Perdana Menteri tetapi direka oleh orang-orang tertentu.

B

This is a denial by Ummi that the letter allegedly signed by her and sent to YAB Prime Minister is hers. I am therefore unable to accept the accused's explanation that exh P29 is stronger. Having also taken into account the other circumstances of the case, it is therefore my finding that the corrections made to the public statement of Azizan and exh P29 were made on the instructions of the accused.

C

With regard to the obtaining of exhs P17 and P18, the accused said in his examination-in-chief that when he received these letters, he had no idea as to how they were obtained and that he:

D

> ... assumed as per my instructions that the police should do what was right and proper.

The words '... as per my instructions ...' suggest that the letters were obtained according to his instructions, or at the very least there was talk between the accused and Dato Mohd Said and Dato Amir Junus prior to the obtaining of the letters. This is inconsistent with the earlier part of his testimony when he said that he did not know how they were obtained. Thus, the accused was asked to explain the use of the word 'instruction' in his re-examination. In reply, he said:

E

> I used consistently the word 'instruct' to instruct officers as Deputy Prime Minister and Minister of Finance to do what is right and proper according to the law. Dozens of statements and speeches were to that effect. Again, the word 'instruction' is applicable to all officers.

F

This explanation lends weight to the view that the accused did in fact give instructions to Dato Mohd Said and Dato Amir Junus with regard to exhs P17 and P18. If what he says is that the word 'instruction' refers to anything that he tells his officers, that does not deny the fact that he did in fact communicate about exhs P17 and P18 to Dato Mohd Said and Dato Amir Junus prior to them being obtained.

G

The reaction of the accused when exhs P17 and P18 were handed to him will have a strong bearing on whether he had asked for them. It is the case for the prosecution that he had in fact expressed his views on exhs P17 and P18 when they were handed to him. In this regard, Dato Amir Junus said:

H

> Selepas membaca ID17, tertuduh meluahkan perasaan bahawa surat ini bolehlah diterima tetapi apabila membaca surat ID18 yang ditulis oleh Ummi, tertuduh kurang puas hati dan bukan seperti yang dikehendaki. Bagi ID17, tertuduh mengatakan, 'Ini bolehlah,' tetapi bagi surat ID18, 'Bukan macam ini'.

I

When Dato Amir Junus was cross-examined on this, he said: A

> Saya tidak bersetuju yang tertuduh tidak meluahkan kepuasan hatinya kepada mana-mana dokumen.

However, this aspect of the challenge to the prosecution evidence was not carried through by the accused when he gave evidence. Again, it is not necessary for the prosecution to have put this to the accused when he was B cross-examined as it is an admission. In the circumstances, the cross-examination of Dato Amir Junus on this issue loses its effect and amounts to an acceptance by the defence of his evidence. It, therefore, my finding that the accused expressed his views on exhs P17 and P18, as testified by Dato Amir Junus. C

It follows that the accused had made corrections to the public statements and had expressed his views on the written statements. These findings strengthen and support my earlier view that the accused did in fact communicate with Dato Mohd Said and Dato Amir Junus about the written statements and public statements prior to them being obtained. D

Before I proceed any further, I shall deal with some arguments raised by the defence in its submission. I shall first refer to certain matters that were put to Dato Mohd Said and Dato Amir Junus when they were recalled by the defence during its case. They are of importance to the defence case. If what was put to them did indeed take place, it will support the defence case that the accused did not ask for the retractions. E

In the case of Dato Mohd Said, what was put to him is as follows:

Question : Do you agree that on 11 August 1997 you met Dato' Seri Anwar's private secretary, Mohd Azmin bin Ali?

Answer : I do not agree. F

Question : I am putting it to you that you did meet him on 11 August 1997 and requested him to speak to his sister Ummi to request her to retract the allegations against Dato' Seri Anwar.

Answer : I did not meet Azmin. So this question does not arise.

Azmin had said in his evidence that he met Dato Mohd Said on 11 August G 1997 at 8.45 am before the latter met the accused. It is at this meeting that Dato Mohd Said is alleged to have made the request to Azmin to ask Ummi to retract the allegations. If this converstion did take place, then the accused could not have asked for the retractions because at that time Dato Mohd Said had not met the accused yet. Dato Mohd Said's answer is that since he did not meet Azmin on that date and time, the question of the conversation H does not arise. It must be noted that at that time, Dato Mohd Said had just come to know of the allegations the previous night and as he said in his examination-in-chief:

> On the 11th morning, the three of us met in my office at about 7 am for them to brief me further. After that I directed them to brief the IGP while I went to I the Deputy Prime Minister's office for a scheduled briefing on another matter.

This piece of evidence was not challenged by the defence. It is my view that Dato Mohd Said could not have asked for the retractions, as testified by Azmin, as he had just come to know of the allegations. The IGP could not have asked him to do so as Dato Mohd Said had not met the IGP then. One other feature of this evidence requires consideration. Azmin had said that he met Dato Mohd Said at 8.45 am on 11 August 1997. The accused originally said that Dato Mohd Said met him on that day at about 9 am. But having referred to his personal diary for 1997, he said:

> The meeting on 11 August 1997 was at 8.45 am.

Surely, Dato Mohd Said could not have been at both places at the same time. Having considered these factors and the totality of the evidence adduced, I agree with Dato Mohd Said that there was no such conversation. I have no hesitation in saying that the alleged request by Dato Mohd Said is an after-thought to bolster the defence.

With regard to Dato Amir Junus, what was put to him was that he had a telephone conversation with ASP Zull Aznam. It goes this way:

> Question : Do you remember the date Dato' Seri Anwar came back from Pulau Langkawi?
>
> Answer : I won't know the exact date he came back from Langkawi. It could be the 16th or 17th.
>
> Question : It is that date I am referring to. I put it to you that you phoned ASP Zull Aznam several times but there was no response from Dato' Seri Anwar. Then you finally told ASP Zull Aznam over the phone that you had to get retractions fast from both these people and then ASP Zull Aznam asked you whether you had obtained clearance from Dato' Seri Anwar. You said that there is no time as we have to act fast. You responded further by saying that Dato' Seri Anwar is taking things too easy. Is that true?
>
> Answer : Saya ada menelefon ASP Zull Aznam pada 17 Ogos 1997 jam lebih kurang 11.15 malam untuk memberitahu kepada tertuduh melalui ASP Zull bahawa polis telah pun menangkap Ummi dan Azizan. Saya tidak pernah menyatakan kepada ASP Zull tentang sikap tertuduh dan juga mengenai surat retraction. Ini adalah tidak wajar bagi seorang senior officer untuk mengatakan sedemikian.
>
> Question : So you do not agree.
>
> Answer : I do not agree.
>
> Question : I put it to you that the conversation took place.
>
> Answer : Tidak.

ASP Zull Aznam had said that he had the conversation with Dato Amir Junus on 17 August 1997 at 11 pm or 11.30 pm. ASP Zull Aznam had said that in that conversation he was first told that Dato Mohd Said and Dato Amir Junus were coming to see the accused. In that event, it would have been unnecessary for Dato Amir Junus to have told ASP Zull Aznam anything more. As I mentioned earlier, the credibility of Dato Amir Junus had been enhanced by the notes he kept of the meetings with the accused.

With regard to the request of the accused for the retractions, the relevant note is exh P44. Having considered the explanation offered by Dato Amir Junus against the background of his credibility and the totality of the evidence adduced, it is my firm finding that the alleged conversation between ASP Zull Aznam and Dato Amir Junus did not take place and is an after-thought to give weight to the defence.

The defence also submitted on a suggestion that was put by the prosecution to the accused in cross-examination. It is this:

> Saya katakan bahawa Dato' Seri telah meminta SP1 and SP11 untuk menyiasat sedalamnya tentang P14B dan C kerana Dato' Seri adalah concerned berkenaan P14B dan C.

The defence submission is worded in this way:

> Since this was put by the DPP, it is part of the prosecution case. This fact alone completely destroys and demolishes the prosecution case and renders the allegations of SP1 and SP11 that DSAI gave instructions to retract completely untrue and again materially corroborates Dato' Seri Anwar Ibrahim's defence in a very cogent manner. ... To top it all, the DPP also put in line with the defence version for thorough investigation and fully. ... But we would like to emphasize and reiterate that the whole case of the prosecution collapsed when the learned DPP put what has been the defence of DSAI from commencement of the case. ... This is the crux of the defence case which was also put by the prosecution. Surely, this is a very vital and material corroboration of DSAI's version.

The defence case is that the accused merely asked for a thorough and full investigation. The prosecution case is that it went beyond that because, as reflected by the evidence, the accused was concerned about the allegations. Thus, what was put to the accused by the prosecution is a gist of its case. The defence submission completely overlooks the use of the word 'concerned' in what was put.

It was then contended by the defence that as Dato Amir Junus had said that the instructions he carried out in this case were from his superior officer, it cannot be said that the accused had directed him as stated in the charges. It is in evidence that the accused gave the directions to both Dato Mohd Said and Dato Amir Junus together. Thus, the fact remains that the accused gave directions to Dato Amir Junus also. What Dato Amir Junus did was to carry out the directions with the consent of his superior officer, Dato Mohd Said. That is purely an administrative arrangement between them. As far as the accused is concerned, he gave directions to Dato Amir Junus as well. That is precisely what he has been charged with. The submission therefore has no merit.

The defence, in its further submission, said that the concepts of turning over and neutralizing are unknown to the law and have no sanction of the law. These concepts are a frolic of the Special Branch which the court must not condone or sanction. The acceptance of the evidence of Dato Mohd Said and Dato Amir Junus would thus mean that the court is tolerating such misbehaviour which must be avoided at all costs. I must state that I am

distressed that the turn over and neutralization operation has been resorted to in this case. However, this submission does not enhance the defence case as the accused is in court today for having caused the Special Branch to resort to just such methods as a result of his directions to get the retraction letters.

It was further contended that it is now easy for Ummi and Azizan to change their stories and say that they were threatened into making exhs P17 and P18. This submission has no substance based on the unchallenged evidence of ACP Mazlan, DSP Aziz, Ummi and Azizan which clearly shows that the letters are not voluntary. It follows that the question of Ummi and Azizan changing their stories to say that they were threatened does not arise.

The cumulative effect of the findings that I have made, that is to say, that the sequence of events as described by the accused up to 12 August 1997 is an after-thought; that he is the one who contacted Dato Mohd Said and Dato Amir Junus regularly; that he did not want to lodge a police report initially because of the adverse publicity by virtue of his position; that he was not inclined that the matter be brought to court; that he did not want the matter to be investigated by the CID; that he wanted Ummi and Azizan to be traced quickly and did not want them to be detained for long; that he asked Dato Mohd Said and Dato Amir Junus to 'gempar' them; that he wanted Ummi and Azizan to retract and deny their allegations within 24 hours and, finally, and most importantly, the evidence showing his prior communications regarding exhs P17, P18, P20 and P22 with Dato Mohd Said and Dato Amir Junus in the manner that I have described earlier, leads me to conclude that the accused went beyond a request for a thorough investigation and had in fact asked Dato Mohd Said and Dato Amir Junus to obtain the written statements and public statements from Ummi and Azizan. The unchallenged evidence of ACP Mazlan, DSP Aziz, Ummi and Azizan which I have narrated earlier coupled with my findings, show that the statements were obtained as directed. The evidence of Dato Mohd Said, Dato Amir Junus, ACP Mazlan and DSP Aziz is corroborated as stated by me in an earlier part of the judgment.

I pause to add that my finding is strengthened by the alternative defence set up by the accused. The principal defence of the accused is that he did not direct Dato Mohd Said and Dato Amir Junus to obtain the retraction letters from Ummi and Azizan. It was submitted by the defence both at the close of the prosecution case and at the close of its own case that if it is found that the accused gave directions, then Dato Mohd Said and Dato Amir Junus are accomplices. This alternative submission will make the accused the principal offender with Dato Mohd Said and Dato Amir Junus as accomplices. I have found them to be accomplices and that they are credible. The submission of the defence, which I had accepted, makes it inconsistent with the principal defence. There is nothing illegal in an accused setting up an alternative defence which is inconsistent with the main defence set up by him. But, as observed by Newbould and Suhrawardy JJ in *Nagendra Chandra Dhar v King-Emperor* AIR 1923 Cal 717 at p 718:

> By setting up an inconsistent defence, there can be no doubt that the case for the accused becomes considerably weaker than if he settled his best line of defence and set up that defence only.

The final matter for determination is whether the request of the accused to Dato Mohd Said and Dato Amir Junus to obtain the written statements and public statements amounts to a direction by him in his capacity as Deputy Prime Minister and Minister of Finance. In seeking to show that the accused did not give the direction in such capacity, the accused said that the discussions between him and them were conducted in a friendly and informal manner. He then added:

> As the Minister of Finance, I had no authority or jurisdiction or power over the police, Special Branch and PW1 or PW11. As the Deputy Prime Minister, I had no authority or jurisdiction over the police or the Special Branch. I as Minister of Finance and as Deputy Prime Minister did not use my office or position in relation to the investigations into P14 or P15.

This part of the evidence is inconsistent with an earlier part of his testimony when he said that on 12 August 1997 he had not decided which branch of the police would conduct the investigations. This is an admission of his authority over the police. The fact that he can summon senior police officers to go to his Official Residence at his request also shows his authority over them. The accused's admission that he did not want Ummi and Azizan to be detained for long also shows his authority over Dato Mohd Said and Dato Amir Junus. Be that as it may, even if the accused had no authority, jurisdiction or power over Dato Mohd Said and Dato Amir Junus, it is not relevant pursuant to the proper test to be applied which I have considered in some detail in an earlier part of the judgment. In accordance with that test, the communications from the accused to Dato Mohd Said and Dato Amir Junus amount to directions as contemplated by the charges. The defence submitted that the proper test for determining this question should be the one laid down by the Privy Council in *Phaindra Chandra Neogy v The King* AIR 1949 PC 117 in following its earlier judgment in *Gill & Anor v The King* AIR 1948 PC 128 to rule that a public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The Privy Council case of *Attorney General of Hong Kong v Ip Chiu & Anor* [1980] 2 WLR 332 which I had found to be most helpful in formulating the proper test to be applied has expressly referred to *Gill & Anor v The King* AIR 1948 PC 128 and distinguished it on the ground that the language of the provision of law in that case, that is to say: 'any act done or purporting to be done in the execution of his duty as a servant of the Crown' is different and therefore inapplicable. I am a little surprised that the defence has sought to refer to these cases as I had, when the defence was submitting at the close of the case for the prosecution, brought to its attention *Attorney General of Hong Kong v Ip Chiu & Anor* [1980] 2 WLR 332 where *Gill & Anor v The King* AIR 1948 PC 128 has been explained.

A It is, therefore, my finding that the defence has not raised any reasonable doubt, on the whole of the evidence adduced, that the accused directed Dato Mohd Said and Dato Amir Junus in his capacity as a Member of the administration, to obtain from Ummi and Azizan written statements addressed to YAB Prime Minister and public statements denying the allegations on the dates prescribed in the charges and that they obtained the B statements as directed. I therefore hold that this element has been proved beyond reasonable doubt.

(II) THE ADVANTAGE OBTAINED BY THE ACCUSED

C I shall consider this element in the same manner as I had classified them earlier.

First and third charges

The accused did not give any evidence on this issue in the course of his D examination-in-chief. When he was asked in cross-examination whether the allegations in exh P14A, B and C could expose him to humiliation and hatred, he said:

> Tohmahan dan fitnah di dalam P14 tidak mudah menyebabkan kebencian ramai kerana rakyat juga ingin mengetahui punca dan usaha penyebar fitnah.

E When the question was repeated, he said:

> Saya bersyukur kerana meskipun ada tohmahan jahat dan pakatan untuk menghina dan menimbulkan kebencian ramai, rakyat masih menyayangi saya dan tidak terpengaruh dengan pakatan jahat tersebut.

When asked whether the contents of exh P14A, B and C could damage his F reputation as Deputy Prime Minister and Minister of Finance, the accused said that though the purpose of the allegations was to damage his reputation, it did not succeed. When the question was repeated, he said:

> Saya tidak terjejas semata-mata kerana tohmahan dan fitnah P14.

G It was then put to the accused that he would not want the allegations to be widely circulated as they could expose him to humiliation and hatred by many. In reply, he said:

> Tohmahan P14 dan P15 dari awal lagi diketahui fitnah besar dan jahat. Tidak mungkin kalaupun tersebar luas boleh mengakibatkan penghinaan dan kebencian ramai.

H When the question was repeated, he said:

> Saya telah jelaskan bahawa fitnah dan tohmahan tidak mungkin menjejaskan nama baik saya.

I It was then put to him that he asked Dato Mohd Said and Dato Amir Junus to investigate into the allegations in depth as he was concerned about exh P14A, B and C. In reply, he said:

> Saya telah meminta SP1 dan SP11 untuk menyiasat sedalam-dalamnya tentang P14B dan C kerana, pertama, saya sedar dan tahu kandungannya adalah fitnah dan, kedua, Ketua Polis Negara telah memaklumkan mengenai penerimaan P14 dan meminta SP1 dan SP11 meneruskan siasatan sebagai isu keselamatan.

The answer given by the accused is an evasive one. In an attempt to avoid answering the question, he has given reasons to explain why he asked for the matter to be investigated thoroughly. I must immediately observe that the two reasons given by the accused for asking Dato Mohd Said and Dato Amir Junus to investigate the matter thoroughly contradict other parts of his own evidence. The first reason as given by the accused, that the allegations were slanderous, is inconsistent with his earlier evidence when he said that he agreed with Dato Mohd Said and Dato Amir Junus that the matter must be investigated thoroughly after they told him that they suspected there were attempts by some politicians to smear his reputation. With regard to the second reason advanced by the accused I find, as I have explained earlier, that the evidence shows that the IGP did not communicate with the accused as claimed. In the light of the evasive answer given and considered with my earlier findings on the concern shown by the accused, it is my view that he was indeed concerned about exh P14A, B and C.

As I said at the close of the prosecution case, the advantage obtained by the accused in these charges must be considered in the light of the role he played in procuring the written statements, that is to say, exhs P17 and P18. The facts, on the whole of the evidence, are substantially the same as at the close of the prosecution case. The accused did not want to lodge a report because of the adverse publicity by virtue of his position. He did not want the matter to be investigated by the CID. He was not inclined that the matter be brought to court. He wanted Ummi and Azizan to be traced quickly and asked Dato Mohd Said and Dato Amir Junus to 'gempar' them. He did not want them to be detained for long. He wanted them to retract and deny their allegations within 24 hours. He contacted Dato Mohd Said and Dato Amir Junus regularly to be briefed. These facts show that the accused was very concerned about the allegations. It follows that the answers given by the accused in cross-examination on the effect of the allegations on him are an attempt by him to embellish his stand that he was not concerned with the allegations. The fact that the accused wanted the allegations to be retracted and denied within 24 hours is particularly significant. The retraction of the allegations at such speed neutralizes the effect of the allegations. Although the accused sought to portray this in a somewhat different light, he was aware of this, as reflected by his answer to a question in re-examination in the following words:

> With regard to P17 and P18, I derived no advantage or benefit whatsoever. It is just like one being accused for being a murderer and then there is a withdrawal of the allegation the following day.

This explains the urgency with which he acted. Just as in the example provided by him, he wanted the allegations made against him to be retracted within 24 hours so that they will have no effect. The manner in which he

went about obtaining the written statements clearly shows that he wanted the letters to save himself from embarrassment. I have dealt with this question at the end of the prosecution case and I find the conclusion only strengthened by the defence evidence.

Second and fourth charges

The evidence in respect of the advantage obtained by the accused under these two charges stem from the meetings between him and SAC Musa on 30 August 1997 and 2 September 1997.

With regard to the meeting on 30 August 1997, the accused said in his examination-in-chief that he had a meeting with the Honourable Attorney General and Dato Ismail Che Ros on that day. As to whether SAC Musa was present at the meeting, he said:

> This is noted in my diary as '10 pagi AG dan Dato Ismail Che Ros'. It is not stated in my diary that SAC Musa also came. I also checked with my PA Azmin and he said that he would put down the name if Musa had attended the meeting.

When asked again in his examination-in-chief whether he had given any instructions to SAC Musa on 30 August 1997 not to investigate into the matter, the accused said:

> I did not give any such instructions to Musa Hassan or to anyone else for that matter. I have checked my records and with my staff that SAC II Musa was not there in the office at that meeting on the 30th.

It was put to the accused in cross-examination that apart from the Honourable Attorney General and Dato Ismail Che Ros, SAC Musa was also present at the meeting on 30 August 1997. In reply, the accused said:

> Setelah menyemak buku diari pejabat dan bertanyakan kepada setiausaha Mohd Azmin Ali, kita tidak ada rekod kehadiran Musa Hassan pada tarikh tersebut. Nama-nama Peguam Negara dan Pengarah CID ada dicatat.

As to the directions that he was alleged to have given SAC Musa on 30 August 1997, the accused said in his re-examination:

> Either in the presence of the Attorney General or not, I would not have given the directions that I am alleged to have given SAC Musa on 30 August. The Attorney General would have cautioned me if I had done so.

Thus, what the accused says is that he did not meet SAC Musa on that day for two reasons, firstly, by virtue of the entry on his diary and, secondly, his records and staff including Azmin confirm that SAC Musa did not attend the meeting. The second reason advanced is hearsay and therefore inadmissible as to its truth. The first reason is based on the fact that SAC Musa's name does not appear in the diary. That on its own does not necessarily mean that SAC Musa did not meet the accused. As I said earlier, the cross-examination of SAC Musa had in fact proceeded on the basis that he met the accused on 30 August 1997. It was not put to SAC Musa that he did not meet the accused on that day. The weight of the evidence of the accused on this issue

therefore becomes weak. In the circumstances, it is my finding that SAC Musa did meet the accused on 30 August 1997 at the latter's office.

> The resultant matter for consideration is whether the accused gave any instructions to SAC Musa on that day. Although the accused denied that he gave any instructions to SAC Musa on that day, such denial is not consistent with the cross-examination of SAC Musa when the latter gave evidence. The accused said in his evidence that at that meeting, he relayed to the Honourable Attorney General and Dato Ismail Che Ros:
>
> ... the message from the Prime Minister as reported in the newspapers on 25 August 1997.

This is inconsistent with what was put to SAC Musa during his cross-examination that this was told to him by the accused. In any event, the relaying of the message is meaningless unless, as testified by SAC Musa, it was preceded by a statement to the effect that it was not necessary to investigate into the matter. I pause to add that the accused while seeking to assert that he did not give the instructions had admitted making such a statement to SAC Musa with reference to the meeting on 2 September 1997. Based on the line of cross-examination of SAC Musa and the evidence of the accused that I have just mentioned, it is my view that he did in fact bring YAB Prime Minister's statement to the attention of SAC Musa on 30 August 1997. The reliance of the accused on YAB Prime Minister's statement to the effect that the matter is closed shows, as testified by SAC Musa, that the accused had in fact told SAC Musa that it is not necessary to investigate into the matter, as, otherwise it is not relevant for any reference to be made to the statement. It is therefore my finding that the accused did give the instructions to SAC Musa, as testified by him, on 30 August 1997.

With regard to the meeting on 2 September 1997, the accused was asked in his examination-in-chief whether he had told SAC Musa not to send the investigation papers to the Honourable Attorney General. In reply, he said:

> I did not give such instructions. There was a meeting with Musa at about that time. But I cannot remember the date of that meeting. I had only one meeting with SAC Musa. That was when he recorded my statement.

When asked whether he had told SAC Musa not to take statements from Azmin, Shamsidar, Dato Nallakaruppan, Aton and ASP Zull Aznam, the accused said:

> I did not give any instructions to Musa not to take statements from those persons. It would be absurd for me to give such instructions when I myself asked Zull Aznam to lodge a police report on my behalf. How could I then suggest to the police not to question even Zull Aznam.

The cross-examination of the accused on this issue goes as follows:

> Question : Saya katakan pada pertemuan Dato' Seri dengan SP13 pada 2 September 1997, Dato' Seri telah memberi arahan kepada SP13 untuk menutup kes berkaitan dengan siasatan berkenaan dengan P16.

Answer : Saya tidak memberi arahan kepada SP13 untuk menutup kes.

Question : Saya katakan kepada Dato' Seri bahawa Dato' Seri telah mengarahkan SP13 untuk tidak menghantar kertas siasatan berkenaan P16 kepada Peguam Negara pada pertemuan 2 September 1997 itu.

Answer : Ini tidak benar. Direka kemudian sebagai bukti conspiracy polis.

Question : Saya katakan di dalam pertemuan itu juga Dato' Seri telah serahkan P20, P21 dan P22 kepada SP13.

Answer : Tidak benar saya serahkan kepada SP13.

In his re-examination, the accused was questioned as to what transpired at the meeting on 2 September 1997. This is his reply:

> With regard to the meeting on 2 September 1997, I cannot recall what transpired at the meeting except for the fact that Musa informed me of certain developments or progress of his investigation. But I did not give any instructions to him not to proceed as alleged by him. At that meeting, I reminded Musa of the Prime Minister's instructions as reported in the papers.

On this issue, it is also necessary to consider the evidence of ASP Zull Aznam and Azmin. Both these defence witnesses did not give any evidence on this meeting in their examination-in-chief. The relevant part of the cross-examination of ASP Zull Aznam runs as follows:

Question : Apabila kamu membuat P16 itu, kamu inginkan pihak polis menjalankan siasatan dengan terperinci?

Answer : Ya, betul.

Question : Jadi oleh yang demikian, pada 2 September 1997 apabila SAC Musa meminta kamu menghubungi saksi-saksi, kamu sudah semestinyalah bersedia untuk membantu SAC Musa menghubungi saksi-saksi tersebut?

Answer : Ya, saya sememangnya bersedia untuk membantu beliau.

Question : Betul bukan bahawa kamu telah memberitahu Dato' Seri Anwar tentang permintaan SAC Musa untuk menemubual saksi-saksi tersebut?

Answer : Saya memberitahu Dato' Seri Anwar Ibrahim tentang perkara ini disebabkan ianya melibatkan saya dan Mohd Azmin Ali selaku staff peribadi Dato' Seri Anwar pada ketika itu.

Question : Kamu tidak menghubungi saksi-saksi tersebut sepertimana yang diminta oleh SAC Musa?

Answer : Saya tidak menghubungi saksi-saksi lain kecuali saya memaklumkan perkara ini kepada Che Mohd Azmin Ali. .....

Question : Pada 2 September 1997 selepas kamu memaklumkan kepada Dato' Seri Anwar tentang permintaan SAC Musa itu, betul atau tidak bahawa lebih kurang 11.30 pagi SAC Musa datang menemui kamu di Jabatan Perdana Menteri?

Answer : Pada hari tersebut lebih kurang jam 11.30 atau 11.45 pagi, SAC Musa ada menjenguk ke dalam pejabat saya dan memaklumkan kepada saya bahawa beliau sudah sampai untuk bertemu dengan Dato' Seri Anwar Ibrahim.

Question : Betul bukan bahawa SAC Musa datang menemui kamu memaklumkan kepada Dato' Seri Anwar tentang permintaan SAC Musa itu kepada kamu?

Answer : Betul.

Question : Kamu tahu atau tidak siapakah yang mengarahkan SAC Musa datang untuk bertemu Dato' Seri Anwar pada hari itu?

Answer : Saya tidak tahu.

In his re-examination, ASP Zull Aznam said that SAC Musa's request to him to get the witnesses ready was conditional upon being contacted again. He said that SAC Musa did not get back to him. On this issue, the cross-examination of Azmin is as follows:

Question : Pada 2 September 1997 jam belih kurang 12.30 tengah hari, ASP Zull Aznam ada memberitahu kamu mengenai kehadiran SAC Musa (SP13) di pejabat Timbalan Perdana Menteri untuk bertemu dengan tertuduh.

Answer : Ya.

Question : Pada hari yang sama, iaitu 2 September 1997, adakah SAC Musa bertemu dengan Dato' Seri Anwar di pejabat Timbalan Perdana Menteri?

Answer : Saya pohon keizinan untuk merujuk diary saya. Saya perlu merujuk kepada diary terlebih dahulu.

Question : Pada ingatan kamu, adakah kamu nampak SAC Musa masuk ke dalam pejabat Timbalan Perdana Meneri untuk berjumpa dengan tertuduh pada hari itu?

Answer : Saya tidak nampak.

Question : Sebelum ASP Zull Aznam memberitahu kamu mengenai kehadiran SAC Musa, adakah kamu menghubungi SAC Musa melalui telefon untuk memaklumkan kepadanya bahawa Timbalan Perdana Menteri ingin berjumpa dengan SAC Musa?

Answer : If I had called SAC Musa for the appointment, I would have definitely entered it in the diary.

Question : Saya mengatakan pada kamu bahawa kamu ada menelefon SP13 pada hari itu untuk memaklumkan padanya bahawa Timbalan Perdana Menteri iaitu tertuduh ingin berjumpanya di pejabat Timbalan Perdana Menteri.

Answer : Soalannya sama.

Question : Sekarang saya mengatakan.

Answer : Saya tidak bersetuju.

The first matter for determination is whether the meeting on 2 September 1997 did in fact take place as described by SAC Musa. The accused started off by saying in his examination-in-chief that he could not remember the date of the meeting. He then qualified it by saying that he had only one meeting with SAC Musa, that is to say, when his police statement was recorded. It must be noted that the accused's police statement was recorded by SAC Musa on 19 August 1997. My earlier finding that the accused did in fact meet SAC Musa on 30 August 1997 means that the accused had

more than one meeting with SAC Musa contrary to his assertion. The cross-examination of the accused on this issue pre-supposed the fact that there was a meeting on that day but the accused did not challenge it in any way. Be that as it may, the accused's answer given in his re-examination, that with regard to the meeting on 2 September 1997, he could not recall what transpired except for what SAC Musa told on the progress of the investigation, amounts to an admission that he did in fact meet SAC Musa on 2 September 1997. It follows that Azmin's evidence that he must check his diary in order to ascertain whether SAC Musa met the accused on that day and that he did not see SAC Musa going into the accused's office is an evasive attempt to avoid answering the questions. It is therefore my finding that SAC Musa did meet the accused on 2 September 1997.

The next matter for deliberation is whether the accused handed over exhs P20, P21 and P22 to SAC Musa and instructed him to stop the investigations. ASP Zull Aznam has confirmed that SAC Musa asked him to get the witnesses ready on 2 September 1997. He also said that after he had informed the accused about the request of SAC Musa, SAC Musa came to see the accused. ASP Zull Aznam also said that after this meeting, SAC Musa did not contact him again regarding the taking of statements from the witnesses. The evidence of SAC Musa is that no further action was taken on the investigation pursuant to what transpired between him and the accused at the meeting. This explains the evidence of ASP Zull Aznam that SAC Musa did not contact him again after 2 September 1997. So something must have transpired between SAC Musa and the accused at the meeting. In determining what transpired between them, I shall first consider the accused's denial that he handed over exhs P20, P21 and P22 to SAC Musa at that meeting. When these letters were referred to SAC Musa in his examination-in-chief, he said:

> Ketiga-tiga dokumen ini adalah dokumen-dokumen yang diberikan kepada saya oleh tertuduh.

SAC Musa was not cross-examined on this, neither was it put to him that these letters were not handed over to him by the accused on 2 September 1997. Thus, the accused's evidence that he did not hand them to SAC Musa becomes very weak. The accused has also denied that he gave any instructions to SAC Musa at the meeting. But he said that he reminded SAC Musa of YAB Prime Minister's: '... instructions as reported in the papers'. If he did not give the instructions to SAC Musa as testified by the latter, I do not see the relevance of the accused's reference to YAB Prime Minister's statement at the meeting unless it was preceded by other instructions. Be that as it may, it is the case for the prosecution and also the basis of the cross-examination of SAC Musa that the accused referred to YAB Prime Minister's press statement to SAC Musa at the meeting on 30 August 1997. It was neither the case for the prosecution nor that of the defence, at that stage, that the accused referred to YAB Prime Minister's press statement to SAC Musa on 2 September 1997. In my opinion therefore, the alleged reference of the statement to SAC Musa, as the accused said he did, on 2 September 1997 is because of too many shifts by

the accused in his line of defence from that adopted in cross-examination, the variations and denials in his testimony and the resultant confusion arising therefrom. In the premises, the accused's evidence must be looked at with grave suspicion. It is my view that the fact that upon receipt of exhs P20, P21 and P22 SAC Musa took immediate steps to recommend that no further action be taken on the investigation supports his evidence that he received instructions from the accused to do so. It is therefore my finding that the accused gave instructions to SAC Musa to stop the investigation upon handing over to him exhs P20, P21 and P22. I must also point out that SAC Musa had agreed to a defence suggestion that these letters together with exhs P17 and P18 made him recommend that no further action be taken in the matter. I am therefore unable to give any credence to the cautioned statement of the accused, exh D72, where he had said that he did not instruct any police officer to stop the investigation. On the evidence adduced, I am also unable to agree with the defence submission that the accused used exhs P20 and P22 only on 25 August 1998 when he wrote to YAB Prime Minister. In the premises, it is my finding that the accused had used exhs P20 and P22 to stop the investigation in order to save himself from any criminal action. The pre-mature termination of the investigation is an advantage to the accused as it thereby prevents the relevant authorities from making a decision on a possible prosecution. The accused has therefore saved himself from any criminal action by using exhs P20 and P22.

It is therefore my finding that the defence has not raised any reasonable doubt, on the whole of the evidence adduced, on the issue of the advantage obtained by the accused. I therefore hold that this element has been proved beyond reasonable doubt.

The findings that I have made reduce to dust the defence of the alleged police conspiracy. I say this because despite the fact that this alleged defence was pursued with much persistence, no evidence was adduced to show that the prosecution evidence had been fabricated as a result of such a conspiracy. No suggestions were put to the police witnesses in their cross-examination, or, for that matter, even when Dato Mohd Said and Dato Amir Junus were recalled by the defence, so as to give them an opportunity to explain whether they had fabricated evidence against the accused pursuant to a police conspiracy. The only suggestion of fabrication that was put was to Dato Amir Junus. But it had nothing to do with a conspiracy by the police but more by Dato Amir Junus for personal reasons. It was put to him that he gave false and fabricated evidence against the accused to save his skin, his gratuity and his pension rights. This was denied by him. The accused alluded to a conspiracy against him by saying that the attitude of the police changed against him in 1998 as compared to in 1997. The findings that I have made show why there was such a change. Thus, the story of the alleged police conspiracy collapsed even before it could take off. On the contrary, my acceptance of the alternative submission of the defence that Dato Mohd Said and Dato Amir Junus were accomplices of the accused leaves no room for doubt that it was the accused who had led them into a conspiracy in order to cover-up the allegations that had been made against

him so as to safeguard his position. The allegations remained covered-up from August 1997 to June 1998 when the accused caused a police report to be made on *Buku 50 Dalil*. The resultant investigation into this report by another branch of the Police Department revealed the involvement of the Special Branch in procuring exhs P17, P18, P20 and P22 on the directions of the accused. Therefore, what was covered-up by the accused was exploded by he himself when he caused the report to be made. The explosion exposed the truth. Until then, it was the belief of all persons concerned that the allegations against the accused had been lawfully and voluntarily withdrawn. It was this belief that caused YAB Prime Minister, the Honourable Attorney General and the IGP to issue statements saying that the complaints against the accused were baseless. If not for the police report made into *Buku 50 Dalil,* they and the people of Malaysia would have continued with that belief. The reality that must now be faced is that the statements that were issued cannot in any way be the yardstick for arguing that, since the accused had been declared to be innocent in 1997, the change in attitude towards him in 1998 was due to a conspiracy and fabrication of evidence by the accused himself. The change in attitude developed late simply because the truth had been hidden earlier.

VERDICT

Having considered the whole of the evidence adduced, I am satisfied that in view of the numerous contradictions and inconsistencies in the defence evidence, not only in that of the accused himself but also in that of his own witnesses, the defence is unworthy of any credence. Further, the defence has failed to raise any reasonable doubt as to the truth of the prosecution case or as to the accused's guilt for the reasons that I have considered earlier. I therefore find that the prosecution has proved its case against the accused beyond reasonable doubt on all four charges and, in the upshot, I find him guilty as charged.

SENTENCE

When I asked the defence to address the court on sentence, learned counsel applied for the case to be stood down in order to confer with the accused. I allowed the request. When court resumed learned counsel said that the accused would like to address the court himself. After some initial reluctance, I allowed the application. The accused then proceeded to read his plea in mitigation from a prepared text. It centred on the allegation of political conspiracy against him and attacks on the judiciary. It was not what one would call a plea in mitigation. The Honourable Attorney General felt compelled to object several times to what the accused was reading. Being concerned, I reminded the accused to confine himself to a proper plea in mitigation to better serve his own interests. He persisted in reading his text. When he finished reading, I turned to his counsel and asked him whether he had anything to say in the confident expectation that he would put up a plea in mitigation. But counsel replied that he did not wish to say anything. The Honourable Attorney General then spoke of the seriousness of the

offence for which the accused had been found guilty. He added that the accused, apart from being the Deputy Prime Minister and Minister of Finance at the material time, was also the Chairman of the Cabinet Committee on Management and Integrity. The task of that committee is to ensure that the government is free from corruption. By committing these offences the accused had betrayed the trust that YAB Prime Minister and the Government had in him. The offences committed by the accused must be viewed at gravely as it undermines the administration of justice. What he did was for his own personal advantage. The Honourable Attorney General then prayed for a deterrent sentence and said that the sentences in respect of the first and third charges and the second and fourth charges should run consecutively as they relate to offences committed at different times. I then asked learned counsel again whether he had anything to say. On this occasion too, he said that he does not wish to say anything. This indicates that there was not only an absence of remorse on the part of the accused but also an unwillingness to make a plea in mitigation.

It is settled law that a court should, when sentencing an accused, take into account all considerations relevant to the case, including the gravity of the offence, the circumstances surrounding the commission of the offence, the antecedents of the accused, the deterrent effect that punishment is to have, any factor that warrants special attention, either in favour or against the accused, and above all the public interest (see *Lim Guan Eng v Pendakwa Raya* [1998] 1 MLJ 14). I hasten to reiterate that the defence deprived me of the benefit of information regarding factors that may be in favour of the accused in assessing sentence by failing to advance a proper plea in mitigation. This was despite my requests to the accused himself when he was reading the text to concentrate on matters that may mitigate the sentence to be imposed. My repeated requests to learned counsel for anything that he may wish to say was also futile as he declined to address the court on sentence. Thus, I had to carry out the sentencing exercise only on the material available to me.

In assessing the appropriate sentence to be passed on the accused, the first matter to be considered is the object of Ordinance No 22, under which the accused was charged and found guilty, which was enacted to widen the campaign against corruption. It serves to strike at any act done by a politician or public officer whereby he has used his public position to his advantage. In my opinion, any sentence passed for an offence under s 2(1) of Ordinance No 22 must take into account the position occupied by the politician or public officer concerned and the nature of the abuse of office. Even in *Nunis v PP* [1982] 2 MLJ 114, a case involving abuse of office by a fire officer, the sentence imposed was two years' imprisonment after due consideration having been given to the fact that the charge was hanging over his head for several years. In commenting on the severity of offences of this nature, Abdul Hamid FJ (as he then was) said in *Nunis v PP* at p 118:

> Perhaps, it would also be appropriate to say that if there is a hope for the country to have a clean and efficient administration, it is essential that members of the administration should not be corrupt. Offences for corrupt practice committed by a public officer, Members of Parliament and

> Assemblymen must therefore be dealt with severely. Public interest demands it.

In this case, the accused was the second highest ranking official in the country at the material time. The manner in which he abused his office hits at the very core of the administration of justice. Its seriousness cannot be underestimated. It is not the act of a minor official upon another. It is the act of the second most powerful official in the country upon two ordinary citizens who led ordinary lives. If complaints of ordinary citizens like them can be caused to be retracted by persons in high authority, with impunity as in this case, through misuse of agencies such as the police or Special Branch, the ordinary citizen would be deprived of justice and protection of the law. There can be no double standards in the administration of justice. It is the birthright of every citizen. It is ironical for a person to make use of the police and the Special Branch to stifle or suppress complaints for his own benefit and, when the truth is exposed, turn the tables against the same agencies and boldly accuse them of fabrication of evidence against him. I was therefore of the opinion that the accused must be given an appropriate custodial sentence. Upon a consideration of the maximum term of imprisonment under s 2(1) of Ordinance No 22 which is 14 years, I was of the view that the initial calculation of the sentence to be imposed should be in the range of nine years' imprisonment. As DA Thomas says in his book entitled *Principles of Sentencing* at p 39:

> From the initial figure calculated by reference to the seriousness of the offence, allowance may be made by way of mitigation for good character, or for moderately good character.

However, in assessing the allowance to be given from my calculation of the initial figure, I had to strain myself to look for mitigating circumstances in favour of the accused in the absence of any plea in mitigation from him or his counsel. I considered, on my own, the accused's service to the nation for 16 years, his previous clean record and that he is a married man with several young children. The factors against the accused are the attempted use of tampered evidence and a good part of the defence consisting of after-thoughts. The offences for which I had found the accused guilty do not reveal them to be merely inadvertent and technical in nature but ones that were pre-meditated and executed over a period of time. The accused did not display any sign of remorse from the very beginning of the trial till its conclusion.

I also considered the period the accused had been in remand from the date of his arrest. As he had been in remand for about seven months prior to being found guilty, I had to determine whether it should be taken into account in assessing sentence. It will have a bearing on the commencement of the date of sentence. This is governed by s 282(d) of the Criminal Procedure Code which reads as follows:

> With regard to sentences of imprisonment the following provisions shall be followed:
>
> (a) ...

(b) ...

(c) ...

(d) every sentence of imprisonment shall take effect from the date on which the same was passed unless the court passing such sentence otherwise directs.

The subsection makes it clear that the normal rule is that a sentence takes effect from the date on which it is passed. A departure from this rule is permissible if the court so directs at its discretion. As it is a discretionary power, an application to that effect must be made by the accused when he is making his plea in mitigation. Where a person has been in remand prior to his conviction such period may be taken into account in one of two ways in determining the sentence. The method chosen will play a decisive role in fixing the date of commencement of the sentence. It may be considered as a factor in assessing the sentence to be imposed in which event the sentence must commence from the date of conviction. If it is not so considered, the sentence may be ordered to take effect from the date of arrest. In the case of the former, the length of the sentence that would otherwise have been imposed would be reduced. In the case of the latter, no such reduction would be ordered but the sentence would be back-dated so as to span the period of the remand. As it is a matter of discretion, a court may decline to take any account of the period in remand (see *R v Clarke* (1996) 87 A Crim R 441). There is no obligation to back-date a sentence in all cases (see *Muir v HM Advocate* [1985] SCCR 402). As a matter of fact, I had the occasion to consider this area of the law in *PP v Iran bin Sakdon* [1998] 4 J Cr 415 where I said at pp 421–422:

> The learned magistrate has taken into account the period of remand of the accused prior to his conviction in imposing sentence and has at the same time ordered the imprisonment term to commence from the date of arrest. Section 282(d) of the Criminal Procedure Code provides that every sentence of imprisonment shall take effect from the date on which the same was passed unless the court passing such sentence otherwise directs. Such a direction may include an order that a sentence of imprisonment is to take effect from the date on which the offender was arrested. The exercise of this power is discretionary (see *Sinniah Pillay v PP* [1992] 1 SLR 225). A court may also make some allowance in imposing sentence where the accused has spent a long time in custody while awaiting trial (see *R v Layton* [1959] Crim LR 61; *R v Newman* [1959] Crim LR 138; *R v Yakimovitch* [1960] Crim LR 66). The exercise of this power is again discretionary and thus I would not agree, with respect, with the view expressed in *Lian Kian Boon v PP* [1991] 1 MLJ 51: 'that in the ordinary course of events the period of his detention should have been taken into consideration and deducted from the sentence of 12 months'. In my opinion, a period of remand can therefore operate in favour of an offender in only one of the two following ways. If the sentence of imprisonment is to take effect from the date it was passed, then the period spent in remand may be considered in assessing the prison term. If that course is adopted, then the prison term cannot be ordered to take effect from the date of arrest. If the period spent in remand is not taken into account in assessing sentence, then the sentence of imprisonment imposed may be ordered to take effect from the date of arrest. A consideration of the period in remand in assessing sentence followed by an order that the sentence of imprisonment is to take effect from

A the date of arrest amounts to double credit being given for the same factor. This is wrong in law.

In the case of the accused, it must be observed that he has been in remand in respect of 10 charges, five of which relate to sodomy allegedly committed by him. Thus, his remand is also in respect of offences other than the four B charges for which I had found him guilty. In *R v McHugh* [1985] 1 NSWLR 588, it was held that it is desirable to back-date a sentence where the pre-trial custody exclusively refers to the offence for which sentence is being passed (see also *R v Reed* [1992] 2 VR 484). As the accused's remand is also in respect of other offences, the commencement of the sentence from his date of arrest will therefore be not appropriate. Thus, I took into account C the period spent by the accused in remand, even in the absence of any application having been made to that effect, by reducing the length of sentence that would otherwise have been imposed. In the circumstances, I convicted the accused and passed a sentence of six years' imprisonment in respect of each of the four charges. I ordered that the sentences are to run concurrently notwithstanding the fact that there was no reply from the D defence to the prosecution submission for the sentences to be consecutive. As I have taken account of the period the accused had spent in remand in assessing the sentence, my order was that the sentence shall commence from the date of conviction.

The defence applied for a stay of execution pending appeal and referred E to me cases such as *Re Kwan Wah Yip & Anor* [1954] MLJ 146 and *Ganesan v PP* [1983] 2 MLJ 369. The prosecution relied on the same cases in opposing bail. In considering the application, I took into account factors such as the seriousness of the offences for which the accused has been found guilty and the defence advanced which consisted of after-thoughts and the attempted use of tampered evidence. Accordingly, I dismissed the F application.

Accused convicted as charged; sentenced to six years imprisonment in respect of each of the charges, the sentences to run concurrently from the date of conviction.

Reported by Andrew Christopher Simon

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